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Retain this issue as a supplement to the Indiana Administrative Code (See p. 790)

PUBLIC COMMENTS REQUESTED:

Under HEA 1135 (P.L.215-2005), after July 1, 2006, the Indiana Register will be published only on the Internet and on a more frequent basis. Written comments and suggestions concerning these changes may be sent to:

LEGISLATIVE SERVICES AGENCY
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IN THIS ISSUE

INDIANA REGISTER

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RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

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

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

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

RETENTION SCHEDULE

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

(1) 2005 Indiana Administrative Code (CD-ROM version).

(2) Volumes 28 and 29 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:
November 10, 2005	December 1, 2005	April 10, 2006	May 1, 2006
December 9, 2005	January 1, 2006	May 10, 2006	June 1, 2006
January 10, 2006	February 1, 2006	June 9, 2006	July 1, 2006
February 10, 2006	March 1, 2006	After July 1, 2006, publication dates will be determined	
March 10, 2006	April 1, 2006	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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†Agricultural Experiment Station	350
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†Agency's rules are expired, repealed, transferred, or otherwise voided.

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†30 State Personnel Board
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33 State Employees' Appeals Commission
35 Board of Trustees of the Public Employees' Retirement Fund
40 State Ethics Commission
42 Office of the Inspector General
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50 Department of Local Government Finance
52 Indiana Board of Tax Review
55 Department of Commerce
58 Enterprise Zone Board
60 Oversight Committee on Public Records
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71 Indiana Horse Racing Commission
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105 Indiana Department of Transportation
†110 Aeronautics Commission of Indiana
†120 Department of Highways
130 Indiana Port Commission
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140 Bureau of Motor Vehicles
†145 Reciprocity Commission of Indiana
†150 Office of Traffic Safety
†160 Department of Vehicle Inspection
170 Indiana Utility Regulatory Commission

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

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

HUMAN SERVICES

405 Office of the Secretary of Family and Social Services
407 Office of the Children's Health Insurance Program
410 Indiana State Department of Health
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414 Hospital Council
415 Commission on Forensic Sciences
†430 Developmental Disabilities Residential Facilities Council
431 Community Residential Facilities Council
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TITLE NUMBER

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460 Division of Disability, Aging, and Rehabilitative Services
465 Department of Child Services
470 Division of Family Resources
†480 Violent Crime Compensation Division
†490 Interdepartmental Board for the Coordination of Human Service Programs

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

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

BUSINESS, FINANCE, AND INSURANCE

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

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808 State Boxing Commission
812 Indiana Auctioneer Commission
816 Board of Barber Examiners
820 State Board of Cosmetology Examiners
824 Indiana Grain Buyers and Warehouse Licensing Agency
825 Indiana Grain Indemnity Corporation
828 State Board of Dentistry
830 Indiana Dietitians Certification Board
832 State Board of Funeral and Cemetery Service
836 Indiana Emergency Medical Services Commission
839 Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board
840 Indiana State Board of Health Facility Administrators
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858 Controlled Substances Advisory Committee
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865 State Board of Registration for Land Surveyors
868 State Psychology Board
872 Indiana Board of Accountancy
876 Indiana Real Estate Commission
878 Home Inspectors Licensing Board
879 Manufactured Home Installer Licensing Board
880 Speech-Language Pathology and Audiology Board
†884 Board of Television and Radio Service Examiners
888 Indiana Board of Veterinary Medical Examiners
†892 Indiana State Board of Examiners in Watch Repairing
896 Board of Environmental Health Specialists
898 Indiana Athletic Trainers Board

MISCELLANEOUS

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

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

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-278(F)

DIGEST

Amends 326 IAC 6.8-2-4 (formerly 326 IAC 6-1-10.1) concerning particulate matter emission limitations (PM_{10}) 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.

Proposed Rule and Notice of Second Hearing: July 1, 2005, Indiana Register (28 IR 3004).

Date of Second Hearing: August 3, 2005.

Final Adoption: August 3, 2005.

326 IAC 6.8-2-4

SECTION 1. 326 IAC 6.8-2-4, AS ADDED AT 28 IR 3507, 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. ~~American Steel Foundry~~ **ASF-Keystone, Inc.** - Hammond in Lake County shall meet the following emission limits:

Source	Emission ~~Limits~~ **Limit** (Units)	Emission ~~Limits~~ **Limit** (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; filed Aug 10, 2005, 1:00 p.m.: 28 IR 3507; filed Oct 20, 2005, 1:30 p.m.: 29 IR 794)

LSA Document #04-278(F)
Proposed Rule Published: July 1, 2005; 28 IR 3004
Hearing Held: August 3, 2005
Approved by Attorney General: October 6, 2005
Approved by Governor: October 20, 2005
Filed with Secretary of State: October 20, 2005, 1:30 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-299(F)

DIGEST

Amends 326 IAC 1-1-3 to update any references to the Code of Federal Regulations (CFR) in Title 326 to mean the July 1, 2004 edition. Amends 326 IAC 1-1-3.5 to update Compilation of Air Pollution Factors AP-42 and Supplements (AP-42) to the year 2004. Effective 30 days after filing with the Secretary of State.

HISTORY

IC 13-14-9-8 Notice and Notice of First Hearing: December 1, 2004, Indiana Register (28 IR 1075).

Date of First Hearing: February 2, 2005.

Proposed Rule: March 1, 2005, Indiana Register (28 IR 1815).

Change of Hearing Notice: May 1, 2005, Indiana Register (28 IR 2406).

Date of Second Hearing: June 1, 2005.

326 IAC 1-1-3
326 IAC 1-1-3.5

SECTION 1. 326 IAC 1-1-3, AS AMENDED AT 28 IR 17, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-1-3 References to the Code of Federal Regulations

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

Sec. 3. Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) shall mean the July 1, ~~2002,~~ **2004,** edition*.

*This body of documents 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 1-1-3; filed Mar 10, 1988, 1:20 p.m.:11 IR 2369; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Dec 14, 1989, 9:35 a.m.: 13 IR 868; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed May 25, 1994, 11:00 a.m.: 17 IR 2237; filed Jul 25, 1995, 5:00 p.m.: 18 IR 3381; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3298; filed Oct 30, 2000, 2:13 p.m.: 24 IR 667; filed May 21, 2002, 10:20 a.m.: 25 IR 3054; filed Aug 26, 2004, 11:30 a.m.: 28 IR 17; filed Oct 14, 2005, 10:00 a.m.: 29 IR 795)*

SECTION 2. 326 IAC 1-1-3.5, AS AMENDED AT 28 IR 18, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-1-3.5 References to the Compilation of Air Pollution Emission Factors AP-42 and Supplements

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

Sec. 3.5. Unless otherwise indicated, any reference to the Compilation of Air Pollution Emission Factors AP-42 (AP-42) means the January 1995, Fifth Edition, Volume I*, including the following AP-42, Fifth Edition, Volume I supplements:

(1) Supplement A, February 1996*.
(2) Supplement B, November 1996*.
(3) Supplement C, November 1997*.
(4) Supplement D, August 1998*.
(5) Supplement E, September 1999*.
(6) Supplement F, September 2000*.
(7) Update 2001*.
(8) Update 2002*.
(9) Update 2003*.
(10) Update 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 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 1-1-3.5; filed May 21, 2002, 10:20 a.m.: 25 IR 3055; filed Aug 26, 2004, 11:30 a.m.: 28 IR 18; filed Oct 14, 2005, 10:00 a.m.: 29 IR 795)*

LSA Document #04-299(F)
Proposed Rule Published: March 1, 2005; 28 IR 1815
Hearing Held: June 1, 2005
Approved by Attorney General: September 29, 2005
Approved by Governor: October 14, 2005
Filed with Secretary of State: October 14, 2005, 10:00 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: 29 CFR, July 1, 2004 Edition; 40 CFR, July 1, 2004 Edition; Update Supplements to the January 1995, Fifth Edition, Volume I, including the following AP-42, Fifth Edition; Update 2003; Update 2004*

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #05-79(F)

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.

Proposed Rule and Notice of Second Hearing: July 1, 2005, Indiana Register (28 IR 3005).

Date of Second Hearing: August 3, 2005.

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; filed Oct 20, 2005, 1:30 p.m.: 29 IR 795)*

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; filed Oct 20, 2005, 1:30 p.m.: 29 IR 796)*

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; filed Oct 20, 2005, 1:30 p.m.: 29 IR 796)

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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 326 AIR POLLUTION CONTROL BOARD

LSA Document #05-80(F)

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.

Proposed Rule and Notice of Second Hearing: July 1, 2005, Indiana Register (28 IR 3007).

Date of Second Hearing: August 3, 2005.

Final Adopted: August 3, 2005.

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; filed Oct 20, 2005, 1:30 p.m.: 29 IR 797)*

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IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: 69 FR 40072

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #04-100(F)

DIGEST

Adds 410 IAC 1-2.4 to establish electronic reporting of emergency department visit abstract data by hospitals. Effective 30 days after filing with the Secretary of State.

410 IAC 1-2.4

SECTION 1. 410 IAC 1-2.4 IS ADDED TO READ AS FOLLOWS:

Rule 2.4. Electronic Reporting of Emergency Department Visit Abstract Data by Hospitals

410 IAC 1-2.4-1 Applicability
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 1. The definitions in this rule apply throughout this rule. *(Indiana State Department of Health; 410 IAC 1-2.4-1; filed Oct 11, 2005, 12:00 p.m.: 29 IR 798)*

410 IAC 1-2.4-2 "Chief complaint" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 2. "Chief complaint" means the patient's set of symptoms and illnesses when the patient first presents at the emergency department. *(Indiana State Department of Health; 410 IAC 1-2.4-2; filed Oct 11, 2005, 12:00 p.m.: 29 IR 798)*

410 IAC 1-2.4-3 "Department" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 3. "Department" means the Indiana state department of health. *(Indiana State Department of Health; 410 IAC 1-2.4-3; filed Oct 11, 2005, 12:00 p.m.: 29 IR 798)*

410 IAC 1-2.4-4 "Electronic transfer" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 4. "Electronic transfer" means the transmission of required data over the Internet using a secure transfer protocol. *(Indiana State Department of Health; 410 IAC 1-2.4-4; filed Oct 11, 2005, 12:00 p.m.: 29 IR 798)*

410 IAC 1-2.4-5 "Emergency department visit" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 5. "Emergency department visit" means an encounter where a person is treated or evaluated, or both, in the emergency department of a hospital. *(Indiana State Department of Health; 410 IAC 1-2.4-5; filed Oct 11, 2005, 12:00 p.m.: 29 IR 798)*

410 IAC 1-2.4-6 "Health Level 7" or "HL7" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 6. "Health Level 7" or "HL7" means a health care information messaging and data exchange protocol developed by the Health Level 7 organization and approved as an American National Standards Institute (ANSI) standard for health-related information exchange. In this rule, the reference to HL7 means versions 2.3, 2.4, and 2.5. *(Indiana State Department of Health; 410 IAC 1-2.4-6; filed Oct 11, 2005, 12:00 p.m.: 29 IR 798)*

410 IAC 1-2.4-7 "Hospital" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10; IC 16-21-2

Sec. 7. "Hospital" means a hospital licensed under IC 16-21-2. *(Indiana State Department of Health; 410 IAC 1-2.4-7; filed Oct 11, 2005, 12:00 p.m.: 29 IR 798)*

410 IAC 1-2.4-8 Emergency department visit data reporting requirements
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 8. (a) This rule applies only to hospitals with emergency departments.

(b) Hospitals with emergency departments shall report all of the emergency department visits at that hospital to the department or the department's designated agent as follows:
(1) Through electronic transfer by HL7 messaging or file transfer protocol. Electronic transfer shall occur immediately at the time of the emergency department visit if feasible, but not later than twenty-four (24) hours from the time of the visit.
(2) Any hospitals unable to comply with the electronic transfer requirements of this section and section 10 of this rule shall become compliant on or before January 1, 2011.

(c) The information that shall be provided to the department or to the department's designated agent under subsection (b) includes the following:
(1) The name of the hospital or a unique identifier for the hospital approved by the department.
(2) The patient's name and medical record number.
(3) The patient's date of birth.
(4) The patient's sex.
(5) The street address of the patient's residence.
(6) The patient's city of residence.
(7) The patient's state of residence.
(8) The zip code of the patient's residence.
(9) The patient's county of residence.
(10) The date and time of the emergency department visit.
(11) The patient's chief complaint or complaints.

(d) The hospital shall make use of fully automated systems that require no manual intervention to conduct this electronic transfer where possible. *(Indiana State Department of Health; 410 IAC 1-2.4-8; filed Oct 11, 2005, 12:00 p.m.: 29 IR 798)*

410 IAC 1-2.4-9 Release of emergency department visit data to local health departments
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 9. Emergency department data submitted to the department may be used for epidemiological investigation or other disease intervention activities of the department or local health department. Investigation shall include obtain-

ing laboratory and clinical data necessary for case ascertainment. Findings of the investigation shall be used to institute control measures to minimize or reduce the risk of disease spread or to reduce exposures in an emergency event. *(Indiana State Department of Health; 410 IAC 1-2.4-9; filed Oct 11, 2005, 12:00 p.m.: 29 IR 798)*

410 IAC 1-2.4-10 Confidentiality and security of emergency department visit data

Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 10. (a) Reporting shall be by electronic transfer. The electronic transfer method shall ensure that the confidentiality and security of emergency department visit data is maintained throughout the data transfer process.

(b) The preferred transfer protocol will be the use of HL7 messages from the hospital to the department.

(c) If HL7 messaging is not possible, daily automated file transfers via secure file transfer protocol (FTP) are acceptable.

(d) Medical or epidemiological information, wherever maintained, concerning reported cases or emergency public health events, shall be made available to the commissioner or the commissioner's designee.

(e) Emergency department visit data reported to the department is confidential whether held by the department, the department's agents, or a local health department. *(Indiana State Department of Health; 410 IAC 1-2.4-10; filed Oct 11, 2005, 12:00 p.m.: 29 IR 799)*

410 IAC 1-2.4-11 Incorporation by reference

Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 11. HL7 (versions 2.3, 2.4, and 2.5) are incorporated by reference in this rule. No later versions are included. Copies of this standard are available at:

(1) www.hl7.org/Library/standards.cfm; and

(2) the department;

for inspection. *(Indiana State Department of Health; 410 IAC 1-2.4-11; filed Oct 11, 2005, 12:00 p.m.: 29 IR 799)*

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Approved by Governor: September 22, 2005
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IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: Health Level 7 Versions 2.3, 2.4, and 2.5, American National Standards Institute

TITLE 412 INDIANA HEALTH FACILITIES COUNCIL

LSA Document #05-35(F)

DIGEST

Amends 412 IAC 2-1-2.1, 412 IAC 2-1-10, and 412 IAC 2-1-14 to establish the effective and expiration dates for qualified medication aide (QMA) certificates, to amend the requirements for certification, recertification, or reinstatement of a QMA, and to amend the fees required for certification, recertification, or reinstatement. Repeals 412 IAC 2-1-13. Effective 30 days after filing with the Secretary of State.

412 IAC 2-1-2.1 **412 IAC 2-1-13**
412 IAC 2-1-10 **412 IAC 2-1-14**

SECTION 1. 412 IAC 2-1-2.1 IS AMENDED TO READ AS FOLLOWS:

412 IAC 2-1-2.1 Employment of QMA and registry verification

Authority: IC 16-28-1-11
Affected: IC 16-28

Sec. 2.1. (a) ~~A facility must~~ **An individual shall** not ~~allow an individual to~~ work as a QMA unless that individual:

(1) has satisfactorily completed a state-approved QMA training and competency evaluation program; and ~~has been~~

(2) is certified by the Indiana state department of health.

An individual shall maintain QMA certification as required by subsection 10(c) *[section 10(c)]* **of this rule in order to continue working as a QMA.**

~~(b) A facility must not allow an individual to work as a QMA unless the individual has been recertified and completed at least six (6) hours of in-service training per calendar year beginning January 1 of the year after initial training and certification.~~

~~(c)~~ **(b)** Before allowing an individual to serve as a QMA, a facility must receive verification from the Indiana Certified Nurse Aide (CNA)/QMA registry that the individual has met certification requirements unless the individual can prove that he or she has:

(1) recently successfully completed a QMA training and competency evaluation program approved by the Indiana state department of health; and ~~has~~

(2) not yet been included in the registry.

Facilities must follow-up to ensure that such an individual actually is placed in the registry. *(Indiana Health Facilities Council; 412 IAC 2-1-2.1; filed Jan 24, 2003, 8:26 a.m.: 26 IR 1937; errata filed Feb 10, 2003, 3:50 p.m.: 26 IR 2375; filed Oct 14, 2005, 10:00 a.m.: 29 IR 799)*

SECTION 2. 412 IAC 2-1-10 IS AMENDED TO READ AS FOLLOWS:

412 IAC 2-1-10 Certification, recertification, reinstatement, and in-service education requirements

Authority: IC 16-28-1-11
Affected: IC 16-28

Sec. 10. (a) A QMA shall be ~~recertified~~ **certified** by the Indiana state department of health. ~~every year.~~

(b) ~~To be recertified, a QMA must obtain a minimum of six (6) hours per calendar year of in-service education in the area of medication administration, beginning January 1 of the year after~~ **For** initial ~~QMA training and~~ certification **as a QMA, the individual must do the following:**

(1) Complete the requirements of this rule.

(2) Submit to the testing entity an application approved by the Indiana state department of health.

(3) Pass the written competency test in three (3) or fewer attempts with a passing score of at least eighty percent (80%).

(c) For recertification, at least thirty (30) days before the expiration of the certificate, the individual must do the following:

(1) Obtain a minimum of six (6) hours per year of annual in-service education.

(2) Submit to the Indiana state department of health a qualified medication aide record of annual in-service education on the form approved by the Indiana state department of health.

(3) Submit to the Indiana state department of health the appropriate fee.

The QMA is responsible for completing the in-service education requirements, maintaining documentation of in-service education, and submitting, or ensuring the submission of, the qualified medication aide record of annual in-service education form and appropriate fee.

(d) If the recertification fees or in-service education form, or both, required by subsection (c) is received by the Indiana state department of health more than ninety (90) days after the expiration of the QMA certification, the individual:

(1) is removed from the QMA registry; and

(2) must be reinstated under subsection (e) in order to work as a QMA.

(e) For reinstatement as a QMA following removal from the QMA registry, the individual must do the following:

(1) Complete the requirements of this rule.

(2) Submit to the testing entity an application approved by the Indiana state department of health.

(3) Pass the written competency test in three (3) or fewer attempts with a passing score of at least eighty percent (80%).

~~(c)~~ **(f)** Annual in-service education shall include ~~but is not limited to, the following~~ **medication administration.** If facility policy allows the QMA to perform such functions in the facility, **annual in-service education shall also include the following:**

(1) Medication administration via G-tube/J-tube.

(2) Hemoccult testing.

(3) Finger stick blood glucose testing (specific to the glucose meter used).

~~(d) It is the QMA's responsibility to track said hours of in-service training and supply proof of completion of in-service training to the Indiana state department of health in conjunction with application for annual recertification.~~

(g) QMA certificates:

(1) are effective upon issue;

(2) and expire on March 31 of the next year.

The annual in-service education requirement period begins each year on March 1 and concludes on the last day of February of the next year. In the case of an initial certification, the annual in-service education requirement period begins on the QMA certification effective date and concludes on the last day of February of the next year. The in-service education requirement period therefore ends one (1) month before the expiration of the certification.

~~(e)~~ **(h)** The Indiana state department of health shall maintain a registry of QMAs who have current certification.

~~(f) A QMA who does not meet the six (6) hour per year in-service requirement shall not be recertified. The QMA will be removed from the QMA registry and be required to reenter and satisfactorily complete a training program and pass the state approved competency evaluation test prior to again serving in the capacity of a QMA.~~ *(Indiana Health Facilities Council; 412 IAC 2-1-10; filed Jan 24, 2003, 8:26 a.m.: 26 IR 1938; filed Oct 14, 2005, 10:00 a.m.: 29 IR 800)*

SECTION 3. 412 IAC 2-1-14 IS AMENDED TO READ AS FOLLOWS:

412 IAC 2-1-14 Fees

Authority: IC 16-28-1-11
Affected: IC 16-28

Sec. 14. (a) An annual fee of ten dollars ($10), payable to the Indiana state department of health, is required for recertification of a QMA.

(b) The fee required by subsection (a) shall be due ~~thirty (30) days prior to~~ **on or before** the expiration of the QMA's certification.

(c) If the recertification fee and/or in-service education form required by section 10(c) of this rule is received after the expiration date of the certificate, a ten dollar ($10) late fee is assessed in addition to the recertification fee in subsection (a). *(Indiana Health Facilities Council; 412 IAC 2-*

1-14; filed Jan 24, 2003, 8:26 a.m.: 26 IR 1939; filed Oct 14, 2005, 10:00 a.m.: 29 IR 800)

SECTION 4. 412 IAC 2-1-13 IS REPEALED.

LSA Document #05-35(F)
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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 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #04-277(F)

DIGEST

Adds 511 IAC 6-7.1, effective with the graduating class of 2010, to adopt new minimum high school graduation requirements, adopt new Core 40 diploma requirements, and adopt Core 40 with academic honors and Core 40 with technical honors diplomas to replace the current academic honors diploma. Effective 30 days after filing with the Secretary of State.

511 IAC 6-7.1

SECTION 1. 511 IAC 6-7.1 IS ADDED TO READ AS FOLLOWS:

ARTICLE 6. DRIVER EDUCATION; GRADUATION REQUIREMENTS; NONSTANDARD PROGRAMS; HIGH ABILITY STUDENTS; POSTSECONDARY ENROLLMENT

Rule 7.1. Graduation Requirements for Students Who Begin High School in the 2006-2007 School Year or a Subsequent Year

511 IAC 6-7.1-1 Definitions
Authority: IC 20-19-2-8; IC 20-30-5; IC 20-30-10-2
Affected: IC 20-30-4-2; IC 20-30-5-7

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

(b) "Board" means the Indiana state board of education.

(c) "Career-academic sequence" means a flexible sequence of career-technical and academic courses that:

(1) help a student explore and prepare for a specific career area or group of related occupations;
(2) are selected and defined by school corporations;
(3) include progressive exposure to the world of work, with some leading to a certificate recognized by business and industry.

As a student progresses in a sequence and learns more about a specific career area, the student may remain in the same career area throughout high school, explore an additional career area, or enroll in a multicredit career-technical program designed to help the student develop knowledge and skills related to a specific occupation.

(d) "Credit" means satisfactory completion of a course that meets the following requirements:
(1) The course is an approved course under 511 IAC 6.1-5.1.
(2) The course is consistent with Indiana academic standards.
(3) The course includes:
(A) a minimum of two hundred fifty (250) minutes of instruction per week for one (1) semester for a school operating on a traditional schedule;
(B) a minimum of eighty-five (85) minutes of instruction per class period, exclusive of passing time, for a school operating on a block schedule; or
(C) a minimum of seventy (70) minutes of instruction per class period, exclusive of passing time, for a school trimester schedule

Multiple credit may not be awarded for the same course unless the approved course description permits multiple credits to be awarded.

(e) "High school diploma" means a certificate of graduation issued by the governing body of a school corporation certifying that the student has satisfied the minimum requirements for graduation from a high school of the school corporation.

(f) "Semester" means one-half (½) of a regular school year. *(Indiana State Board of Education; 511 IAC 6-7.1-1; filed Oct 20, 2005, 11:30 a.m.: 29 IR 801)*

511 IAC 6-7.1-2 Minimum standards
Authority: IC 20-19-2-8; IC 20-30-5; IC 20-30-10-2
Affected: IC 20-30-4-2; IC 20-30-5-7

Sec. 2. The following general principles are a guide to school corporations in certifying to the board that students are qualified for high school graduation:
(1) The standards in section 4 of this rule are minimum requirements for granting a high school diploma. School corporations may establish graduation requirements that exceed these minimum standards, in which case the local standards take precedence.
(2) The board recognizes only high school diplomas conferred by schools accredited by the board.

(Indiana State Board of Education; 511 IAC 6-7.1-2; filed Oct 20, 2005, 11:30 a.m.: 29 IR 801)

511 IAC 6-7.1-3 Semester requirements; waiver

Authority: IC 20-19-2-8; IC 20-30-5; IC 20-30-10-2
Affected: IC 20-30-4-2; IC 20-30-5-7

Sec. 3. (a) To be graduated from a high school, a pupil shall attend at least seven (7) semesters in grades 9 through 12.

(b) A school corporation may, under procedures adopted by the governing body, waive the seven (7) semester requirement if:

(1) failure to waive the requirement would effectively prevent the student from graduating from high school; or

(2) the student likely would have qualified for a gifted and talented education program waiver had it been available, and the waiver is for the purpose of:

(A) enrolling in an accredited postsecondary educational institution, and the student has been accepted for enrollment; or

(B) furthering the student's education through military enlistment, and the student has an enlistment contract that contains an educational component.

(c) A decision of a high school to deny a request for a waiver may be appealed to the superintendent, and a decision of a superintendent to deny a request for a waiver may be appealed to the governing body of the school corporation.

(d) Local decisions on requests for waivers shall be documented. *(Indiana State Board of Education; 511 IAC 6-7.1-3; filed Oct 20, 2005, 11:30 a.m.: 29 IR 802)*

511 IAC 6-7.1-4 Minimum required and elective credits

Authority: IC 20-19-2-8; IC 20-30-5; IC 20-30-10-2
Affected: IC 20-30-4-2; IC 20-30-5-7; IC 20-30-5-9

Sec. 4. (a) For a student who enters high school in the 2006-2007 school year or a subsequent school year, a minimum of forty (40) credits is necessary for high school graduation. Thirty-four (34) of the credits shall be earned in the areas of study specified in subsection (b), and six (6) of the credits shall be earned from courses in these and other areas of study listed in subsection (b) and 511 IAC 6.1-5.1.

(b) The thirty-four (34) required credits consist of the following:

(1) Language arts	**8 credits**
(2) Social studies	**4 credits**
(3) Mathematics	**4 credits**
(4) Science	**4 credits**
(5) Health and wellness	**1 credit**
(6) Physical education I	**2 credits**
(7) Career-academic sequence	**6 credits**
(8) Flex credits	**5 credits**

(c) Courses that may be counted toward the required credits prescribed in subsection (b) are subject to the following provisions:

(1) Language arts credits must include a balance of literature, composition, and speech. A minimum of six (6) credits of the language arts requirement must be from the English language arts area of study. Two (2) credits may be from:

(A) business technology;
(B) family and consumer sciences;
(C) technology education; or
(D) career-technical;

courses having predominately language arts content. For a student who successfully completes a Level III world language course, the student's school may waive two (2) credits of the language arts requirement.

(2) Social studies credits must include the following:

(A) Two (2) credits in United States history.
(B) One (1) credit in United States government.
(C) One (1) credit in another social studies course, global economics, or consumer economics.

(3) Four (4) mathematics credits must be earned after the student enters high school. Mathematics credits earned prior to entering grade 9 may meet specific course requirements but not the credit requirements for graduation. Such credits are considered elective mathematics credits. The purpose of taking mathematics courses before entering grade 9 is to give the student the opportunity to take an additional mathematics course in high school or take a challenging mathematics course in high school over an extended period of time. If the student completes any of the required mathematics courses before entering high school, the student must complete additional mathematics courses in high school. Mathematics credits must include two (2) credits in algebra I or integrated mathematics I unless a student has completed algebra I or integrated mathematics I before entering high school. A minimum of two (2) credits of the mathematics requirement shall be from the mathematics area of study. Two (2) credits may be from:

(A) business technology;
(B) family and consumer sciences;
(C) technology education; or
(D) career-technical;

courses having predominately mathematics content.

(4) Subject to subdivisions (5) through (7), the health and wellness credit shall be from a course in the health education area of study that has comprehensive health education content.

(5) The health and wellness credit requirement may be waived for a student if the student's program includes one (1) of the following:

(A) Three (3) credits from the following family and consumer sciences courses:

(i) Child development and parenting.
(ii) Human development and family wellness.
(iii) Interpersonal relationships.

(iv) Nutrition and wellness.

(v) Orientation to life and careers or adult roles and responsibilities.

(B) Two (2) credits from the following health careers education courses offered through career-technical programs:

(i) Integrated health sciences I.

(ii) Integrated health sciences II.

(6) One (1) credit substitution of either a science, family and consumer sciences, or health and physical education credit may be used to fulfill the health and wellness credit requirement for a student who qualifies under the religious objection provision of IC 20-10.1-4-7 *[IC 20-10.1 was repealed by P.L.1-2005, SECTION 240, effective July 1, 2005. See IC 20-30-5-9.]* **(hygiene instruction).**

(7) Science credits must include two (2) credits in biology I. The four (4) credits of science shall include content from more than one (1) of the major science discipline categories, which are:

(A) life science;

(B) physical science; and

(C) earth and space science.

Two (2) credits may be from family and consumer sciences or career-technical courses having predominately science content.

(8) Flex credits must include five (5) credits in any combination from the following:

(A) Additional courses to extend the career-academic sequence.

(B) Courses involving workplace learning, which may include the following courses:

(i) Career exploration internship.

(ii) Career planning and success skills (internship).

(iii) Business cooperative experiences.

(iv) Cooperative family and consumer sciences.

(v) Industrial cooperative training.

(vi) Interdisciplinary cooperative education.

(vii) Marketing field experience.

(C) Advanced career-technical education, college credit.

(D) Additional courses in:

(i) language arts;

(ii) social studies;

(iii) mathematics;

(iv) science;

(v) world languages; or

(vi) fine arts.

(d) The career-academic sequence is recommended, but not required, if a student, after completing grade 11:

(1) transfers to a school accredited by the board from a school not accredited by the board, including a school outside Indiana; or

(2) initially begins course work under the Core 40 diploma and changes to the requirements of this section.

(Indiana State Board of Education; 511 IAC 6-7.1-4; filed Oct 20, 2005, 11:30 a.m.: 29 IR 802)

511 IAC 6-7.1-5 Core 40 diploma

Authority: IC 20-19-2-8; IC 20-30-5; IC 20-30-10-2
Affected: IC 20-30-4-2; IC 20-30-5-7

Sec. 5. (a) To be eligible for a Core 40 diploma, a student who enters high school in the 2006-2007 school year or a subsequent school year must complete a minimum of forty (40) high school credits. Thirty-four (34) of the credits shall be earned in the areas of study specified in subsection (b), and six (6) of the credits shall be earned from courses in these and other areas of study listed in subsection (b) and 511 IAC 6.1-5.1.

(b) The thirty-four (34) required credits consist of the following:

(1) Language arts	**8 credits**
(2) Social studies	**6 credits**
(3) Mathematics	**6 credits**
(4) Science	**6 credits**
(5) Health and wellness	**1 credit**
(6) Physical education I	**2 credits**
(7) Directed elective credits	**5 credits**

(c) Courses that may be counted toward the required credits prescribed in subsection (b) are subject to the following provisions:

(1) Only courses that officially have been designated as Core 40 courses may be counted.

(2) Language arts credits must include a balance of literature, composition, and speech.

(3) Social studies credits must include the following:

(A) Two (2) credits in United States history.

(B) One (1) credit in United States government.

(C) One (1) credit in economics.

(D) Two (2) credits in world history and civilization or two (2) credits in geography and history of the world.

(4) The mathematics requirement is subject to the following:

(A) Mathematics credits must include one (1) of the following course sequences:

(i) Algebra I, geometry, and algebra II.

(ii) Integrated mathematics I, integrated mathematics II, and integrated mathematics III.

(B) The student is strongly recommended to earn two (2) mathematics credits during the student's last year in high school. A student who takes mathematics in the senior year is better prepared for mathematics placement exams upon entering a postsecondary education program, an apprenticeship program, or the military. A student who takes mathematics in the senior year is:

(i) less likely to require remedial mathematics courses following high school; and

(ii) more likely to complete a postsecondary program.

(C) The student must earn either:

(i) two (2) mathematics credits; or

(ii) two (2) credits in physics;

during the student's last two (2) years in high school.

(5) Science credits must include the following:
(A) Two (2) credits in biology.
(B) Two (2) credits in chemistry, physics, or integrated chemistry-physics.
(C) Two (2) additional credits in Core 40 science courses.
(6) Directed elective credits must include five (5) credits in any combination from the following:
(A) World languages.
(B) Fine arts.
(C) Career-technical.

(d) The student is encouraged to complete a career-academic sequence. *(Indiana State Board of Education; 511 IAC 6-7.1-5; filed Oct 20, 2005, 11:30 a.m.: 29 IR 803)*

511 IAC 6-7.1-6 Core 40 diploma with academic honors
Authority: IC 20-19-2-8; IC 20-30-5; IC 20-30-10-2
Affected: IC 20-30-4-2; IC 20-30-5-7

Sec. 6. (a) To be eligible for a Core 40 diploma with academic honors, a student who enters high school in the 2006-2007 school year or a subsequent school year must complete a minimum of forty-seven (47) high school credits. Depending on the world languages option chosen, thirty-eight (38) or forty (40) of the credits shall be earned in the areas of study specified in subsection (b), and seven (7) or nine (9) of the credits shall be earned from courses in these and other areas of study listed in subsection (b) and 511 IAC 6.1-5.1.

(b) Required credits consist of the following:

(1) Language arts	**8 credits**
(2) Social studies	**6 credits**
(3) Mathematics	**8 credits**
(4) Science	**6 credits**
(5) Health and wellness	**1 credit**
(6) Physical education I	**2 credits**
(7) World languages	**6 or 8 credits**
(8) Fine arts	**2 credits**

(c) Courses that may be counted toward the required credits prescribed in subsection (b) are subject to the following provisions:
(1) Only courses that officially have been designated as Core 40 courses may be counted.
(2) Language arts credits must include a balance of literature, composition, and speech.
(3) Social studies credits must include the following:
(A) Two (2) credits in United States history.
(B) One (1) credit in United States government.
(C) One (1) credit in economics.
(D) Two (2) credits in world history and civilization or two (2) credits in geography and history of the world.
(4) The mathematics requirement is subject to the following:
(A) Mathematics credits must include one (1) of the following course sequences:
(i) Algebra I, geometry, algebra II, and two (2) additional credits in Core 40 mathematics courses.
(ii) Integrated mathematics I, integrated mathematics II, integrated mathematics III, and two (2) additional credits in Core 40 mathematics courses.
(B) The student is strongly recommended to earn two (2) mathematics credits during the student's last year in high school. A student who takes mathematics in the senior year is better prepared for mathematics placement exams upon entering a postsecondary education program, an apprenticeship program, or the military. A student who takes mathematics in the senior year is:
(i) less likely to require remedial mathematics courses following high school; and
(ii) more likely to complete a postsecondary program.
(C) The student must earn either:
(i) two (2) mathematics credits; or
(ii) two (2) credits in physics;
during the student's last two (2) years in high school.
(5) Science credits must include the following:
(A) Two (2) credits in biology.
(B) Two (2) credits in chemistry, physics, or integrated chemistry-physics.
(C) Two (2) additional credits in Core 40 science courses.
(6) World languages credits must include one (1) of the following:
(A) Six (6) credits in Core 40 courses in a single world language.
(B) Four (4) credits in Core 40 courses in each of two (2) different world languages.

(d) Only courses in which the student earns a grade of "C" or higher may count toward the credits required in subsections (b) and (f).

(e) The student must have a cumulative grade point average of "B" or above in all courses.

(f) The student must complete one (1) of the following:
(1) Four (4) credits in two (2) courses designated as advanced placement under 511 IAC 6.1-5.1 and the corresponding College Board Advanced Placement tests.
(2) Dual high school and college credit courses resulting in six (6) transferable college credits.
(3) The following combination of advanced placement courses and tests and college credits:
(A) Two (2) credits in a course designated as advanced placement under 511 IAC 6.1-5.1 and the corresponding College Board Advanced Placement test.
(B) Dual high school and college credit courses resulting in three (3) transferable college credits.
(4) The SAT test, with a composite score of 1200 or higher.
(5) The ACT test, with a composite score of 26 or higher.

(6) The International Baccalaureate diploma.

(g) The student is encouraged to complete a career-academic sequence. *(Indiana State Board of Education; 511 IAC 6-7.1-6; filed Oct 20, 2005, 11:30 a.m.: 29 IR 804)*

511 IAC 6-7.1-7 Core 40 diploma with technical honors
Authority: IC 20-19-2-8; IC 20-30-5; IC 20-30-10-2
Affected: IC 20-30-4-2; IC 20-30-5-7

Sec. 7. (a) To be eligible for a Core 40 diploma with technical honors, a student who enters high school in the 2006-2007 school year or a subsequent school year must complete a minimum of forty-seven (47) high school credits. Thirty-seven (37) or thirty-nine (39) of the credits shall be earned in the areas of study specified in subsection (b), and eight (8) or ten (10) of the credits shall be earned from courses in these and other areas of study listed in subsection (b) and 511 IAC 6.1-5.1.

(b) Required credits consist of the following:

(1) Language arts	**8 credits**
(2) Social studies	**6 credits**
(3) Mathematics	**6 credits**
(4) Science	**6 credits**
(5) Health and wellness	**1 credit**
(6) Physical education I	**2 credits**
(7) Career-technical program	**8-10 credits**

(c) Courses that may be counted toward the required credits prescribed in subsection (b) are subject to the following provisions:

(1) Only courses that officially have been designated as Core 40 courses may be counted.

(2) Language arts credits must include a balance of literature, composition, and speech.

(3) Social studies credits must include the following:

(A) Two (2) credits in United States history.

(B) One (1) credit in United States government.

(C) One (1) credit in economics.

(D) Two (2) credits in world history and civilization or two (2) credits in geography and history of the world.

(4) The mathematics requirement is subject to the following:

(A) Mathematics credits must include one (1) of the following course sequences:

(i) Algebra I, geometry, and algebra II.

(ii) Integrated mathematics I, integrated mathematics II, and integrated mathematics III.

(B) The student is strongly recommended to earn two (2) mathematics credits during the student's last year in high school. A student who takes mathematics in the senior year is better prepared for mathematics placement exams upon entering a postsecondary education program, an apprenticeship program, or the military. A student who takes mathematics in the senior year is:

(i) less likely to require remedial mathematics courses following high school; and

(ii) more likely to complete a postsecondary program.

(C) The student must earn either:

(i) two (2) mathematics credits; or

(ii) two (2) credits in physics;

during the student's last two (2) years in high school.

(5) Science credits must include the following:

(A) Two (2) credits in biology.

(B) Two (2) credits in chemistry, physics, or integrated chemistry-physics.

(C) Two (2) additional credits in Core 40 science courses.

(d) Only courses in which the student earns a grade of "C" or higher may count toward the credits required in subsection (b).

(e) The student must have a cumulative grade point average of "B" or above in all courses.

(f) The student must earn a state-recognized certification or certificate of technical achievement in the career-technical program. *(Indiana State Board of Education; 511 IAC 6-7.1-7; filed Oct 20, 2005, 11:30 a.m.: 29 IR 805)*

511 IAC 6-7.1-8 Correspondence courses; credit
Authority: IC 20-19-2-8; IC 20-30-5; IC 20-30-10-2
Affected: IC 20-30-4-2; IC 20-30-5-7

Sec. 8. A student desiring to complete courses by correspondence first obtains the approval of the local school board or its designee. The local school board has the option of establishing a maximum number of credits acceptable for meeting graduation requirements. Correspondence credits are acceptable only when taken from an institution properly accredited by the appropriate regional accrediting association affiliated with or approved by the Council on Postsecondary Accreditation (COPA). *(Indiana State Board of Education; 511 IAC 6-7.1-8; filed Oct 20, 2005, 11:30 a.m.: 29 IR 805)*

511 IAC 6-7.1-9 Military experience
Authority: IC 20-19-2-8; IC 20-30-5; IC 20-30-10-2
Affected: IC 20-30-4-2; IC 20-30-5-7

Sec. 9. (a) Subject to the limitations in this section, a school board may recognize training and experience obtained in the United States armed forces in meeting high school graduation requirements.

(b) A maximum of four (4) credits may be recognized for basic training in the following areas:

(1) Physical education	**2 credits**
(2) Health and wellness	**2 credits**

A maximum of one (1) credit may be granted for each three (3) months of service.

(c) Credit for service training schools may be granted in

accordance with recommendations made by the American Council on Education in the publication Guide to the Evaluation of Educational Experience in the Armed Forces.

(d) Credit may be awarded for courses completed in the:
(1) United States Armed Forces Institute;
(2) Marine Corps Institute; and
(3) Coast Guard Institute;
provided that the course are validated by terminal examinations as recommended by the American Council on Education. Credit may be awarded in recognition of satisfactory achievement on examinations in established high school courses, not including GED tests, offered by the United States Armed Forces Institute and the American Council on Education.

(e) Credit may be awarded for courses completed through accredited colleges and universities as recommended by the respective colleges and universities. *(Indiana State Board of Education; 511 IAC 6-7.1-9; filed Oct 20, 2005, 11:30 a.m.: 29 IR 805)*

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TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-273(F)

DIGEST

Amends 675 IAC 14-4.3, the 2005 Indiana Residential Code, so as not to be in conflict with provisions of the 2005 Indiana Electrical Code, 675 IAC 17-1.7. Adds 675 IAC 17-1.7, which adopts by reference and amends the 2005 National Electrical Code as the Indiana Electrical Code, 2005 Edition. Repeals 675 IAC 14-4.3-214, 675 IAC 14-4.3-217, 675 IAC 14-4.3-245, 675 IAC 14-4.3-251, 675 IAC 14-4.3-252, 675 IAC 14-4.3-253, and 675 IAC 17-1.6. Effective 30 days after filing with the Secretary of State.

675 IAC 14-4.3-155.5
675 IAC 14-4.3-213
675 IAC 14-4.3-214
675 IAC 14-4.3-214.5
675 IAC 14-4.3-215
675 IAC 14-4.3-216
675 IAC 14-4.3-217
675 IAC 14-4.3-220.3
675 IAC 14-4.3-220.6
675 IAC 14-4.3-220.7
675 IAC 14-4.3-220.8
675 IAC 14-4.3-226.2
675 IAC 14-4.3-227.1
675 IAC 14-4.3-227.5
675 IAC 14-4.3-227.6
675 IAC 14-4.3-228
675 IAC 14-4.3-229.5
675 IAC 14-4.3-231
675 IAC 14-4.3-233
675 IAC 14-4.3-233.5
675 IAC 14-4.3-234
675 IAC 14-4.3-235
675 IAC 14-4.3-239.5
675 IAC 14-4.3-241
675 IAC 14-4.3-241.5
675 IAC 14-4.3-242
675 IAC 14-4.3-244.5
675 IAC 14-4.3-245
675 IAC 14-4.3-247
675 IAC 14-4.3-247.5
675 IAC 14-4.3-248.5
675 IAC 14-4.3-249.5
675 IAC 14-4.3-251
675 IAC 14-4.3-252
675 IAC 14-4.3-253
675 IAC 14-4.3-254.5
675 IAC 14-4.3-254.7
675 IAC 17-1.6
675 IAC 17-1.7

SECTION 1. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-155.5 Section G2411.1; gas pipe bonding
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 155.5. Delete the text of SECTION G2411.1 and add text to read as follows: All metal gas piping upstream from the equipment shutoff valve(s) shall be electrically continuous and shall be bonded to an effective ground-fault current path in accordance with SECTION E3509.7. Except where connected to appliances and at bonding connections, flexible metal gas piping shall be isolated from metal water piping, metal air ducts, and all electrical wiring methods by a space separation of at least 2 inches. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-155.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 806)*

SECTION 2. 675 IAC 14-4.3-213, AS ADDED AT 28 IR 3297, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-213 Section E3305.6; illumination
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 213. Add a sentence to the end of SECTION E3305.6 to read as follows: Additional lighting ~~fixtures~~ **outlets** shall not be required where the work space is illuminated by an adjacent artificial light source. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-213; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3297, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 806)*

SECTION 3. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-214.5 Section E3307.1; grounded conductors

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 214.5. In the second sentence of SECTION E3307.1, after "distinctive white", add "or gray". *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-214.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 807)*

SECTION 4. 675 IAC 14-4.3-215, AS ADDED AT 28 IR 3297, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-215 Section E3401; general

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 215. Change SECTION E3401 as follows: (a) Delete the definition of APPROVED and substitute to read as follows: See the definition of APPROVED in SECTION R202.

(b) Delete the definition of BRANCH CIRCUIT, GENERAL PURPOSE and substitute: A branch circuit that supplies two or more receptacles or outlets for lighting and appliances.

(c) Change the definition of Grounding Conductor, Equipment to read as follows: The conductor used to connect the noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor or the grounding electrode conductor, or both, at the service equipment or at the source of a separately derived system.

(d) Change the definition of Grounding Electrode Conductor to read as follows: The conductor used to connect the grounding electrode(s) to the equipment ~~grounding~~ **grounded** conductor or to the grounded conductor, or to both, at the service equipment, at each building or structure where supplied from a common service, or at the source of a separately derived system.

~~(e) Delete the definition of GROUND-FAULT CIRCUIT-INTERRUPTER and substitute: A device intended for the protection of personnel that functions to de-energize a circuit or portion thereof within an established period of time when a current to ground exceeds the value established for a Class A device.~~

~~(f)~~ **(e)** Delete the definition of LABELED and substitute as follows: See the definition of LABELED in SECTION R202.

~~(g)~~ **(f)** Delete the definition of LISTED and substitute to read as follows: See the definition of LISTED AND LISTING in SECTION R202. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-215; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3297, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 807)*

SECTION 5. 675 IAC 14-4.3-216, AS ADDED AT 28 IR 3297, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-216 Section E3501.6.2; service disconnect location

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 216. At the end of SECTION E3501.6.2, add a sentence to read as follows: Conductors shall be considered outside of a building or structure under any of the following conditions:

(1) where installed under not less than 2 inches (51 mm) of concrete beneath a building or other structure,

(2) where installed within a building or other structure in a raceway that is encased in concrete or brick **not less than 2 inches thick, or**

(3) where installed in conduit and under not less than 18 inches (457 mm) of earth beneath a building or other structure.

(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-216; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3297, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 807)

SECTION 6. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-220.3 Section E3508.1; grounding electrode system

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 220.3. (a) In the first sentence of SECTION E3508.1, delete "available" and insert "present".

(b) After the text of SECTION E3508.1, add an exception to read as follows: Exception: Concrete-encased electrodes of existing buildings or structures shall not be required to be part of the grounding electrode system where the steel reinforcing bars or rods are not accessible for use without disturbing the concrete. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-220.3; filed Oct 21, 2005, 1:50 p.m.: 29 IR 807)*

SECTION 7. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-220.6 Section E3509.7; bonding other metal piping

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 220.6. Before the period following the next to last sentence in SECTION E3509.7, add "if connected using a fixed wiring method". *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-220.6; filed Oct 21, 2005, 1:50 p.m.: 29 IR 807)*

SECTION 8. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256,

SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-220.7 Section E3510.1; installation
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 220.7. Change SECTION E3510.1 as follows: (a) In the second sentence of SECTION E3510.1, delete "severe".

(b) In the third sentence of SECTION E3510.1, after "grounding", add "electrode".

(c) In the third sentence of SECTION E3510.1, delete "and".

(d) In the third sentence of SECTION E3510.1, before "rigid nonmetallic conduit", add "Schedule 80".

(e) In the fourth sentence of SECTION E3510.1, after "grounding", add "electrode".

(f) In the fourth sentence of SECTION E3510.1, before "rigid nonmetallic conduit", add "Schedule 80".

(g) In the first sentence of the second paragraph of SECTION E3510.1, delete "Insulated or bare" and insert "Bare". *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-220.7; filed Oct 21, 2005, 1:50 p.m.: 29 IR 808)*

SECTION 9. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-220.8 Section E3510.2; enclosures for grounding electrode conductors
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 220.8. (a) In the first and second sentences of SECTION E3510.2, delete "Metal" and insert "Ferrous metal".

(b) In the second and third sentences of SECTION E3510.2, insert "electrode" between "grounding" and "conductor". *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-220.8; filed Oct 21, 2005, 1:50 p.m.: 29 IR 808)*

SECTION 10. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-226.2 Section E3603.1; branch circuits for heating
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 226.2. Add an exception to the end of SECTION E3603.1 to read as follows: Exception: Permanently connected air-conditioning equipment shall be permitted to be connected to the same branch circuit. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-226.2; filed Oct 21, 2005, 1:50 p.m.: 29 IR 808)*

SECTION 11. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-227.1 Table E3701.4; allowable applications for wiring methods
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 227.1. In the third column, in the sixteenth line of TABLE E3701.4, delete "--" and insert "A". *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-227.1; filed Oct 21, 2005, 1:50 p.m.: 29 IR 808)*

SECTION 12. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-227.5 Section E3702.4; in unfinished basements
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 227.5. At the end of SECTION E3702.4, add the following: NM cable used on a wall of an unfinished basement shall be installed in a listed conduit or tubing. Conduit or tubing shall utilize a nonmetallic bushing or adapter at the point the cable enters the raceway. Metal conduit and tubings and metal outlet boxes shall be grounded. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-227.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 808)*

SECTION 13. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-227.6 Section E3703.3; grounding
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 227.6. Delete SECTION E3703.3 without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-227.6; filed Oct 21, 2005, 1:50 p.m.: 29 IR 808)*

SECTION 14. 675 IAC 14-4.3-228, AS ADDED AT 28 IR 3299, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-228 Section E3703.4; protection from damage
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 228. ~~In~~ **Delete** the third sentence of SECTION E3703.4 ~~delete "service laterals" and substitute "underground service~~

~~conductors".~~ **without substitution.** *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-228; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3299, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 808)*

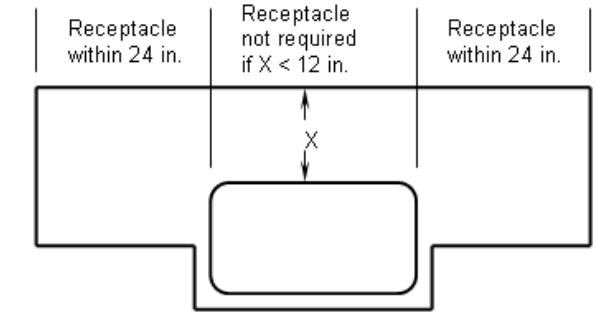
SECTION 15. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-229.5 Section E3801.4.1; wall counter space

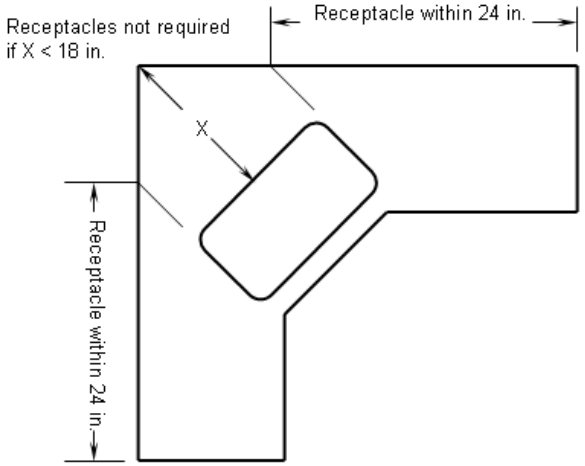
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 229.5. (a) After SECTION E3801.4.1, add an exception to read as follows: Exception: Receptacle outlets shall not be required on a wall directly behind a range or sink in the installation described in FIGURE E3801.4.1.

(b) After SECTION E3801.4.1, add FIGURE E3801.4.1 as follows:



Sink or range extending from face of counter



Sink or range mounted in corner

FIGURE E3801.4.1

(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-229.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 809)

SECTION 16. 675 IAC 14-4.3-231, AS ADDED AT 28 IR 3299, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-231 Section E3801.6; bathroom

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 231. **(a)** In SECTION E3801.6, delete the second sentence and substitute: The receptacle outlet shall be located on a wall or partition that is adjacent to the basin or basin countertop.

(b) Add an exception to SECTION E3801.6 to read as follows: Exception: The receptacle shall not be required to be mounted in the wall or partition where it is installed on the side or face of the basin cabinet not more than 12 inches below the countertop. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-231; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3299, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 809)*

SECTION 17. 675 IAC 14-4.3-233, AS ADDED AT 28 IR 3299, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-233 Section E3801.11; HVAC outlet

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 233. In the ~~first~~ **last** sentence of SECTION E3801.11, delete ~~"located in attics and crawl spaces"~~ **"and shall be protected in accordance with SECTION E3802.4"** without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-233; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3299, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 809)*

SECTION 18. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-233.5 Section E3802.7; bar sink receptacles

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 233.5. (a) In the title of SECTION E3802.7, before "bar sink receptacles", insert "laundry, utility, and wet".

(b) Change the first sentence of SECTION E3802.7 to read as follows: All 125-volt, single-phase, 15- and 20-ampere receptacles that are installed within 6 feet of the outside edge of a laundry, utility, or wet bar sink shall have ground-fault circuit-interrupter protection for personnel. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-233.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 809)*

SECTION 19. 675 IAC 14-4.3-234, AS ADDED AT 28 IR 3299, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-234 Section E3802.8; boathouse receptacles
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 234. Change SECTION 3802.8 to read as follows: All 125-volt, single phase, 15- or 20-ampere receptacles **and outlets that supply boat hoists** installed in boathouses shall have ground-fault circuit-interrupter protection for personnel. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-234; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3299, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 810)*

SECTION 20. 675 IAC 14-4.3-235, AS ADDED AT 28 IR 3300, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-235 Section E3802.11; bedroom outlets
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 235. ~~In~~ **Delete** SECTION E3802.11. ~~add "receptacle" after "20-ampere" and before "outlets".~~ *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-235; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3300, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 810)*

SECTION 21. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-239.5 Section E3805.12.2.1; conductor fill
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 239.5. After the first sentence of SECTION E3505.12.2.1, insert a new sentence to read as follows: A looped, unbroken conductor not less than twice the minimum length required for free conductors in SECTION E3306.10.3 shall be counted twice. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-239.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 810)*

SECTION 22. 675 IAC 14-4.3-241, AS ADDED AT 28 IR 3300, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-241 Section E3806.8.2.1; nails and screws
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 241. **(a)** Change the **title of** SECTION ~~heading~~ **E3806.8.2.1** to "Nails and screws". In the text, delete "Nails" and insert "Nails and screws".

(b) Add a new sentence at the end of SECTION E3806.8.2.1 to read as follows: Screws shall not be permitted to pass through the box unless exposed threads in the box are protected using approved means to avoid abrasion of conductor insulation. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-241; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3300, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 810)*

SECTION 23. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-241.5 Section E3807.2; damp or wet locations
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 241.5. (a) At the end of SECTION E3807.2, add a new sentence to read as follows: For enclosures in wet locations, raceways or cables entering above the level of uninsulated live parts shall use fittings listed for wet locations.

(b) Add an exception to SECTION E3807.2 to read as follows: Exception: Nonmetallic enclosures shall be permitted to be installed without the airspace on a concrete, masonry, tile, or similar surface. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-241.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 810)*

SECTION 24. 675 IAC 14-4.3-242, AS ADDED AT 28 IR 3300, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-242 Section E3807.7; cables
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 242. **(a)** At the end of Part 6 in the exception, delete ~~the words~~ ", the applicable article".

(b) After Part 6 of the exception, add Part 7 to read as follows: Where installed as conduit or tubing, the allowable cable fill does not exceed that permitted for complete conduit or tubing systems by SECTION E3804.6. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-242; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3300, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 810)*

SECTION 25. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-244.5 Section E3808.8.3; nonmetallic sheathed cable
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 244.5. (a) In the first sentence of SECTION E3808.8.3, delete "be permitted to" without substitution.

(b) Delete the second sentence of SECTION E3808.8.3 without substitution. *(Fire Prevention and Building Safety*

Commission; 675 IAC 14-4.3-244.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 810)

SECTION 26. 675 IAC 14-4.3-247, AS ADDED AT 28 IR 3301, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

675 IAC 14-4.3-247 Section E3902.10; exterior wet locations
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 247. **(a)** Delete the title of SECTION E3902.10 and substitute "Exterior wet locations".

(b) In the first sentence of SECTION E3902.10, delete "other than outdoors" without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-247; filed Jun 13, 2005, 3:00 p.m.: 28 IR 3301, eff 90 days after filing with the Secretary of State; filed Oct 21, 2005, 1:50 p.m.: 29 IR 811)*

SECTION 27. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-247.5 Section E3902.11; bathtub and shower space
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 247.5. Change SECTION E3902.11 to read as follows: A receptacle shall not be installed within or directly over a bathtub or shower stall. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-247.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 811)*

SECTION 28. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-248.5 Section E3903.10; bathtub and shower areas
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 248.5. After the last sentence in SECTION E3903.10, add a new sentence to read as follows: Luminaires located in this zone shall be listed for damp locations or listed for wet locations where subject to shower spray. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-248.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 811)*

SECTION 29. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-249.5 Section E4103.1.3; GFCI protection
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 249.5. Add a new sentence to the end of SECTION E4103.1.3 to read as follows: Receptacles that supply pool pump motors and that are rated 15 or 20 amperes, 125 volts through 250 volts, single phase, shall be provided with GFCI protection. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-249.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 811)*

SECTION 30. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-254.5 Section E4107.2; ground-fault circuit-interrupters required
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 254.5. Add a second paragraph at the end of SECTION E4107.2 to read as follows: All 125-volt receptacles located within 20 feet of the inside walls of a storable pool shall be protected by a ground-fault circuit interrupter. In determining these dimensions, the distance to be measured shall be the shortest path the supply cord of an appliance connected to the receptacle would follow without piercing a floor, wall, ceiling, doorway with hinged or sliding door, window opening, or other effective permanent barrier. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-254.5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 811)*

SECTION 31. 675 IAC 14-4.3, AS ADDED AT 28 IR 3256, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

675 IAC 14-4.3-254.7 Section E4107.4; receptacle locations
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 254.7. Add a new SECTION E4107.4; receptacle locations, with text to read as follows: Receptacles shall not be less than 10 feet from the inside walls of a pool. In determining these dimensions, the distance to be measured shall be the shortest path the supply cord of an appliance connected to the receptacle would follow without piercing a floor, wall, ceiling, doorway with hinged or sliding door, window opening, or other effective permanent barrier. *(Fire Prevention and Building Safety Commission; 675 IAC 14-4.3-254.7; filed Oct 21, 2005, 1:50 p.m.: 29 IR 811)*

SECTION 32. 675 IAC 17-1.7 IS ADDED TO READ AS FOLLOWS:

Rule 1.7. Indiana Electrical Code, 2005 Edition

675 IAC 17-1.7-1 Adoption by reference
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 1. That certain document, being titled as National

Electrical Code, 2005 edition, first printing, and errata to the first printing (errata dated December 24, 2004), published by the National Fire Protection Association, One Batterymarch Park, Quincy, Massachusetts 02269, is hereby incorporated by reference and made a part of the rule, except those portions as are amended and adopted in sections 3 through 26 of this rule. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-1; filed Oct 21, 2005, 1:50 p.m.: 29 IR 811)*

675 IAC 17-1.7-2 Title; availability
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 2. (a) This rule shall be known as the Indiana Electrical Code, 2005 edition, and shall be published, except for incorporated documents, by the fire and building services department for general distribution and use under the title. Whenever the term "this code" is used within this rule, including incorporated documents, it shall mean the Indiana Electrical Code.

(b) This rule, with the incorporated National Electrical Code, 2005 edition, is available for review and reference at the Fire and Building Services Department, 402 West Washington Street, Room W246, Indianapolis, Indiana 46204. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-2; filed Oct 21, 2005, 1:50 p.m.: 29 IR 812)*

675 IAC 17-1.7-3 Section 90.2; scope
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 3. SECTION 90.2 is amended to read as follows: (A) Covered. This code covers: Installations of electric conductors and equipment within or on Class 1 and Class 2 structures, including industrialized building systems, and other premises wiring covered by rules of the commission in this title.

(B) Class 1 and Class 2 structures covered by the Indiana Residential Code shall be made to comply with the provisions of this code or the electrical provisions of the Indiana Residential Code (675 IAC 14).

Not covered. This code does not cover:
(1) Installations in ships, watercraft, railway rolling stock, aircraft, automotive vehicles, and buildings or structures that are not Class 1 or Class 2 structures.
(2) Installations in underground mines.
(3) Installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communication purposes.
(4) Installations of communication equipment under the exclusive control of communication utilities, located outdoors or in building spaces used exclusively for such installations.
(5) Installations, including associated lighting under the exclusive control of electric utilities for the purpose of communication, or metering; or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, etc., or outdoors on private property by established rights such as easements.
(6) Installations of electrical wiring, equipment, and devices, factory installed in manufactured homes under the authority of the U.S. Department of Housing and Urban Development (HUD).
(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-3; filed Oct 21, 2005, 1:50 p.m.: 29 IR 812)

675 IAC 17-1.7-4 Section 90.4; enforcement
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 4. SECTION 90.4 is amended to read as follows: Requirements covering enforcement, granting of variances, and approval of alternate methods or materials are covered in Indiana statutes and 675 IAC 12, the General Administrative Rules of the commission. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-4; filed Oct 21, 2005, 1:50 p.m.: 29 IR 812)*

675 IAC 17-1.7-5 Section 90.6; formal interpretations
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 5. SECTION 90.6 is deleted in its entirety without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-5; filed Oct 21, 2005, 1:50 p.m.: 29 IR 812)*

675 IAC 17-1.7-6 Section 90.7; examination of equipment for safety
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 6. SECTION 90.7 is deleted in its entirety without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-6; filed Oct 21, 2005, 1:50 p.m.: 29 IR 812)*

675 IAC 17-1.7-7 Section 90.8; wiring planning
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 7. SECTION 90.8 is deleted in its entirety without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-7; filed Oct 21, 2005, 1:50 p.m.: 29 IR 812)*

675 IAC 17-1.7-8 Section 90.9; units of measurement
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 8. Delete the text of SECTION 90.9 and substitute the following: For the purpose of this code, the measurement system is the English (U.S. customary or inch-pound) system. Compliance with the numbers shown in the inch-pound system shall constitute compliance with this code. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-8; filed Oct 21, 2005, 1:50 p.m.: 29 IR 812)*

675 IAC 17-1.7-9 Article 100; definitions
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13-2-7; IC 22-13-2-11; IC 22-14-2-10; IC 22-15-2-7; IC 36-7-2-9; IC 36-8-17-9

Sec. 9. (a) In Part I of Article 100, delete the text of the definition of APPROVED and substitute to read as follows: APPROVED. Acceptance by the AUTHORITY HAVING JURISDICTION by one of the following methods:

(1) investigation or tests conducted by recognized authorities; or

(2) investigation or tests conducted by technical or scientific organizations; or accepted principles.

The investigation, tests, or principles shall establish that the materials, equipments, and types of construction are safe for their intended purpose.

(b) In Part I of Article 100, delete the text of the definition of AUTHORITY HAVING JURISDICTION and substitute to read as follows: AUTHORITY HAVING JURISDICTION. The office of the state building commissioner authorized under IC 22-15-2-7; the office of the state fire marshal authorized under IC 22-14-2-10; the local building official authorized under IC 36-7-2-9 and local ordinance; the fire department authorized under IC 36-8-17-9.

(c) In Part I of Article 100, after the definition of ISOLATED, add the definition of KITCHEN to read as follows: KITCHEN. An area used, or designated to be used, for the preparation of food.

(d) In Part I of Article 100, delete the text of the definition of SPECIAL PERMISSION and substitute to read as follows: SPECIAL PERMISSION. A variance granted by the commission under IC 22-13-2-11 or a variance granted by a political subdivision and approved by the commission under IC 22-13-2-7(b). *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-9; filed Oct 21, 2005, 1:50 p.m.: 29 IR 813)*

675 IAC 17-1.7-10 Section 110.16; spaces about electrical equipment
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 10. In SECTION 110.26(A)(1)(b), delete "By special permission" and insert "When approved". *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-10; filed Oct 21, 2005, 1:50 p.m.: 29 IR 813)*

675 IAC 17-1.7-11 Section 210.5; ungrounded conductors
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 11. In the first sentence of Section 210.5(C), after "identified by" insert "phase and". *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-11; filed Oct 21, 2005, 1:50 p.m.: 29 IR 813)*

675 IAC 17-1.7-12 Section 210.12; arc-fault circuit-interrupter protection
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 12. Delete Section 210.12(B) without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-12; filed Oct 21, 2005, 1:50 p.m.: 29 IR 813)*

675 IAC 17-1.7-13 Section 210.63; heating, air-conditioning, and refrigeration equipment outlet
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 13. At the end of the first sentence of Section 210.63, add "located in attics and crawl spaces". *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-13; filed Oct 21, 2005, 1:50 p.m.: 29 IR 813)*

675 IAC 17-1.7-14 Section 215.12; ungrounded conductors
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 14. In the first sentence of Section 215.12(C), after "identified by" insert "phase and". *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-14; filed Oct 21, 2005, 1:50 p.m.: 29 IR 813)*

675 IAC 17-1.7-15 Section 230.2; number of services
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 15. (a) In the second sentence of SECTION 230.2, after "location", insert "as close as practical".

(b) In SECTION 230.2(B), special occupancies, delete "By special permission" and insert "When approved". *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-15; filed Oct 21, 2005, 1:50 p.m.: 29 IR 813)*

675 IAC 17-1.7-16 Section 250.104; bonding of piping systems and exposed structural steel
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 16. (a) Change the next to last sentence of SECTION 250.104(B) to read as follows: The equipment grounding

conductor for the circuit that is likely to energize the piping shall be permitted to serve as the bonding means if connected using a fixed wiring method.

(b) Add a new sentence at the end of SECTION 250.104(B) to read as follows: All metal gas piping upstream from the equipment shutoff valve(s) shall be electrically continuous. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-16; filed Oct 21, 2005, 1:50 p.m.: 29 IR 813)*

675 IAC 17-1.7-17 Table 314.16(A); metal boxes
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 17. In the line for 4 × 1 1/4 inch round/octagonal boxes and in the column for 8AWG conductor, delete "5" and insert "4". *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-17; filed Oct 21, 2005, 1:50 p.m.: 29 IR 814)*

675 IAC 17-1.7-18 Section 334.10; uses permitted
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 18. (a) Delete the text of (2) in SECTION 334.10 and substitute: (2) In any building or structure not exceeding three stories (see SECTION 362.10 for the definition of STORY).

(a) For exposed work except as prohibited in SECTION 334.12.

(b) Concealed within walls, floors, and ceilings except as prohibited in SECTION 334.12.

(b) Delete the text of (3) in SECTION 334.10 and substitute: (3) In any building or structure exceeding three stories (see SECTION 362.10 for the definition of STORY), Type NM, Type NMC, and Type NMS cables shall be concealed within walls, floors, and ceilings that provide a thermal barrier of material that has at least a 15-minute finish rating identified in listings of fire-rated assemblies. The 15-minute-finish-rated thermal barrier shall be permitted to be used for combustible walls, floors, and ceilings, except as prohibited in SECTION 334.12.

Exception: Where the building is provided with an approved automatic sprinkler system throughout, Type NM, Type NMC, and Type NMS cables are permitted to be used within walls, floors, ceilings, exposed or concealed, in buildings exceeding three stories.

(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-18; filed Oct 21, 2005, 1:50 p.m.: 29 IR 814)

675 IAC 17-1.7-19 Section 334.12; uses not permitted
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 19. In SECTION 334.12(A), delete Item (2) without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-19; filed Oct 21, 2005, 1:50 p.m.: 29 IR 814)*

675 IAC 17-1.7-20 Section 334.15; unfinished basements
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 20. In the third sentence of SECTION 334.15(C), delete "permitted to be" without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-20; filed Oct 21, 2005, 1:50 p.m.: 29 IR 814)*

675 IAC 17-1.7-21 Section 334.80; ampacity
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 21. Delete the second paragraph of SECTION 334.80 without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-21; filed Oct 21, 2005, 1:50 p.m.: 29 IR 814)*

675 IAC 17-1.7-22 Section 362.10; uses permitted
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 22. (a) Delete the first two sentences of text in SECTION 362.10 and substitute to read as follows: For the purpose of this section, a story is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet above grade for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, such usable or unused under-floor space shall be considered as a story.

(b) In Item (1), under SECTION 362.10, delete "floors above grade" and substitute "stories".

(c) In Item (2), under SECTION 362.10, delete "floors above grade" and substitute "stories".

(d) In SECTION 362.10, delete the exception to Items (2) and (5) and substitute to read as follows: Where the building is provided with an approved automatic sprinkler system throughout, ENT is permitted to be used within walls, floors, and ceilings, exposed or concealed, in buildings exceeding three stories. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-22; filed Oct 21, 2005, 1:50 p.m.: 29 IR 814)*

675 IAC 17-1.7-23 Section 362.12; uses not permitted
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 23. In Item (7), under SECTION 362.12, uses not permitted, add 362.10(2) to the listed sections. *(Fire Preven-*

tion and Building Safety Commission; 675 IAC 17-1.7-23; filed Oct 21, 2005, 1:50 p.m.: 29 IR 814)

675 IAC 17-1.7-24 Section 406.8; wet locations
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 24. (a) Delete subsection 406.8(B)(1) and the text that follows without substitution.

(b) Change subsection 406.8(B)(2) to 406.8(B)(1), change the title from "other receptacles" to "exterior or interior wet locations", and delete the first sentence that follows the title without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-24; filed Oct 21, 2005, 1:50 p.m.: 29 IR 815)*

675 IAC 17-1.7-25 Section 525.5; clearance to rides and attractions
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 25. In the first sentence of SECTION 525.5(B), delete "4.5 m (15 ft)" and insert "3.048 m (10 ft)". *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-25; filed Oct 21, 2005, 1:50 p.m.: 29 IR 815)*

675 IAC 17-1.7-26 Section 547.1; scope
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 26. Change SECTION 547.1 to read as follows: The provisions of this section shall apply to the following agricultural buildings or that part of a building or adjacent areas of similar or like nature as specified in (A) and (B) below, unless the building is not a Class 1 structure. Agricultural buildings that are not Class 1 structures may be regulated by local ordinance. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-26; filed Oct 21, 2005, 1:50 p.m.: 29 IR 815)*

675 IAC 17-1.7-27 Section 550.4; general requirements
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 27. Add a second sentence to SECTION 550.4(B) to read as follows: Modular homes, constructed under 675 IAC 15, Industrialized Building Systems, shall comply with the provisions of Article 545 of this code. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-27; filed Oct 21, 2005, 1:50 p.m.: 29 IR 815)*

675 IAC 17-1.7-28 Section 600.1; scope
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 28. Delete the first sentence of SECTION 600.1 and substitute to read as follows: This section covers the installation of conductors and equipment for electric signs and outline lighting as defined in Article 100 of this code that are within or connected to Class 1 or Class 2 buildings or structures. *(Fire Prevention and Building Safety Commission; 675 IAC 17-1.7-28; filed Oct 21, 2005, 1:50 p.m.: 29 IR 815)*

SECTION 33. THE FOLLOWING ARE REPEALED: 675 IAC 14-4.3-214; 675 IAC 14-4.3-217; 675 IAC 14-4.3-245; 675 IAC 14-4.3-251; 675 IAC 14-4.3-252; 675 IAC 14-4.3-253; 675 IAC 17-1.6.

LSA Document #04-273(F)
Notice of Intent Published: November 1, 2004; 28 IR 622
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*Hearing Held: May 17, 2005; **AND** July 6, 2005*
Approved by Attorney General: October 7, 2005
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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 856 INDIANA BOARD OF PHARMACY

LSA Document #05-42(F)

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; filed Oct 14, 2005, 1:00 p.m.: 29 IR 815)

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; filed Oct 14, 2005, 1:00 p.m.: 29 IR 816)

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 it 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; filed Oct 14, 2005, 1:00 p.m.: 29 IR 816)

LSA Document #05-42(F)
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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 857 INDIANA OPTOMETRIC LEGEND DRUG PRESCRIPTION ADVISORY COMMITTEE

LSA Document #05-43(F)

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:
(1) ocular pharmacology **(PH); or**
(2) ocular therapeutics in the areas of:
(A) anterior segment (AS);
(B) systemic and ocular disease (SD);
(C) posterior segment (PS);
(D) glaucoma (GL); or
(E) postoperative care (PO).

(c) 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)~~ **(d)** 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; filed Oct 20, 2005, 11:30 a.m.: 29 IR 816)

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; filed Oct 20, 2005, 11:30 a.m.: 29 IR 817)

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~~ **of:**
(1) ocular pharmacology **(PH);** or
(2) ocular therapeutics **in the areas of:**
(A) anterior segment (AS);
(B) systemic and ocular disease (SD);
(C) posterior segment (PS);
(D) glaucoma (GL); or
(E) postoperative care (PO);
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; filed Oct 20, 2005, 11:30 a.m.: 29 IR 817)*

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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 326 AIR POLLUTION CONTROL BOARD

LSA Document #05-316(AC)

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in the Indiana Administrative Code, 2005 edition:

(1) In 326 IAC 6-2-1(e), after "contained in", delete "326 IAC 6-1" and insert "326 IAC 6.5 and 326 IAC 6.8" in both locations.

(2) In 326 IAC 6-2-1(i), after "326 IAC 2", delete "or 326 IAC 6-1" and insert ", 326 IAC 6.5, or 326 IAC 6.8".

(3) In 326 IAC 6-3-1(c)(3), delete "326 IAC 6-1" and insert "326 IAC 6.5 and 326 IAC 6.8", after "concerning", delete "nonattainment area", and, after "particulate", insert "matter".

(4) In 326 IAC 6-5-4(i), after "as set forth in", delete "326 IAC 6-1-2(d)(2)" and insert "326 IAC 6.5-1-2(d)(2) and 326 IAC 6.8-1-2(d)(2)".

(5) In 326 IAC 6-6-1, after "the requirements of", delete "326 IAC 6-1".

(6) In 326 IAC 6-6-1, after "326 IAC 6-4", delete "and".

(7) In 326 IAC 6-6-1, after "326 IAC 6-5", insert ", 326 IAC 6.5, and 326 IAC 6.8".

Filed with Secretary of State: October 19, 2005, 4:28 p.m.

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

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

LSA Document #05-128

Under IC 4-22-2-40, LSA Document #05-128, printed at 28 IR 3343, is recalled.

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #05-102

Under IC 4-22-2-40, LSA Document #05-102, printed at 28 IR 3345, is recalled.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-264

LSA Document #05-264, printed at 29 IR 56, is withdrawn.

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #01-408(APCB)

LSA Document #01-408(APCB), printed at 25 IR 943, is withdrawn.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #05-113

Under IC 4-22-2-41, LSA Document #05-113, printed at 28 IR 3654, is withdrawn.

TITLE 816 BOARD OF BARBER EXAMINERS

LSA Document #04-291

LSA Document #04-291, printed at 28 IR 984, is withdrawn.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-306(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 779. Effective October 14, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 779, $250 Christmas Club".**

SECTION 2. **Scratch-off tickets in scratch-off game number 779 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 779 shall contain twelve (12) play symbols and play symbol captions arranged in pairs of pictures and prize amounts in the game play data area all concealed under a large spot of latex material.**

(b) The play symbols and play symbol captions in scratch-off game number 779, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) A picture of Santa Claus
SANTA
(2) A picture of bells
BELLS
(3) A picture of a snowflake
SNFLAKE
(4) A picture of candy cane
CANDY
(5) A picture of a reindeer
RNDEER
(6) A picture of a horn
HORN
(7) A picture of a Christmas tree
TREE
(8) A picture of a snowman
SNOMAN
(9) A picture of present
PRESNT
(10) A picture of a gingerbread man
GMAN

(c) The play symbols and play symbol captions in scratch-off game number 779 representing prize amounts shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $5.00
FIVE
(4) $6.00
SIX
(5) $10.00
TEN
(6) $20.00
TWENTY
(7) $40.00
FORTY
(8) $100
ONE HUN
(9) $250
TWO FTY

SECTION 4. **The holder of a scratch-off ticket in scratch-off game number 779 shall remove the latex material covering the twelve (12) play symbols and play symbol captions. If one (1) or more play symbols of a picture of a Christmas tree are exposed, the holder is entitled to a prize of the paired prize amount(s). The paired play symbols, prize amounts, and number of winners in scratch-off game number 779 are as follows:**

Paired Play Symbols	Prize Amount	Approximate Number of Winners
1 – $1.00	$1	395,200
2 – $1.00	$2	228,000
1 – $2.00	$2	152,000
4 – $1.00	$4	45,600
2 – $2.00	$4	30,400
5 – $1.00	$5	30,400
1 – $5.00	$5	15,200
2 – $5.00	$10	7,600
1 – $6.00 + 2 – $2.00	$10	7,600
1 – $10.00	$10	7,600
2 – $5.00 + 1 – $10.00	$20	7,600
1 – $20.00	$20	7,600
2 – $20.00	$40	5,700
4 – $5.00 + 1 – $20.00	$40	2,470
1 – $40.00	$40	2,470
5 – $20.00	$100	380
1 – $100	$100	380
1 – $250	$250	152

SECTION 5. **(a) There shall be approximately four million five hundred thousand (4,500,000) scratch-off tickets initially available in scratch-off game number 779.**

(b) The odds of winning a prize in scratch-off game number 779 are approximately 1 in 4.82.

(c) All reorders of tickets for scratch-off game number 779 shall have the same:

(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;

as contained in the initial order.

SECTION 6. **The last day to claim a prize in scratch-off game number 779 is October 28, 2006.**

SECTION 7. **This rule shall expire November 28, 2006.**

LSA Document #05-306(E)
Filed with Secretary of State: October 14, 2005, 1:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-309(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 780. Effective October 18, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 780, EA$Y 10".**

SECTION 2. **Scratch-off tickets in scratch-off game number 780 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 780 shall contain twelve (12) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. The play symbols and play symbol captions shall be arranged in pairs representing numbers and prize amounts.**

(b) The play symbols and play symbol captions in scratch-off game number 780, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELV
(12) 12
TLV

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 780 shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $5.00
FIVE
(4) $10.00
TEN
(5) $20.00
TWENTY
(6) $40.00
FORTY
(7) $50.00
FIFTY
(8) $100
ONE HUN
(9) $500
FIVE HUN
(10) $1,000
ONE THOU

SECTION 4. **The holder of a scratch-off ticket in scratch-off game number 780 shall remove the latex material covering the twelve (12) play symbols and play symbol captions. If one (1) or more play symbols of "10" are exposed, the holder is entitled to a prize of the paired prize amounts. The number of winning play symbols, prize amounts, and approximate number of winners in scratch-off game number 780 are as follows:**

Number of Winning Play Symbols	Prize Amount	Approximate Number of Winners
1 – $1.00	$1	504,000
2 – $1.00	$2	168,000
1 – $2.00	$2	168,000
4 – $1.00	$4	100,800
1 – $5.00	$5	16,800
3 – $1.00 + 1 – $2.00	$5	16,800
1 – $10.00	$10	33,600
5 – $1.00 + 1 – $5.00	$10	16,800
4 – $5.00	$20	8,400
2 – $10.00	$20	4,200
1 – $20.00	$20	4,200
4 – $5.00 + 2 – $10.00	$40	1,680
4 – $10.00	$40	1,680

1 – $40.00	**$40**	**1,680**
5 – $10.00 + 1 – $50.00	**$100**	**630**
1 – $20.00 + 2 – $40.00	**$100**	**630**
1 – $100	**$100**	**420**
5 – $100 + 1 – $500	**$1,000**	**63**
1 – $1,000	**$1,000**	**63**

SECTION 5. **(a) There shall be approximately five million (5,000,000) scratch-off tickets initially available in scratch-off game number 780.**

(b) The odds of winning a prize in scratch-off game number 780 are approximately 1 in 4.81.

(c) All reorders of tickets for scratch-off game number 780 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in scratch-off game number 780 is October 28, 2006.**

SECTION 7. **This rule shall expire November 28, 2006.**

LSA Document #05-309(E)
Filed with Secretary of State: October 18, 2005, 1:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-310(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 783. Effective October 18, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 783, Super Polar Express".**

SECTION 2. **Scratch-off tickets in scratch-off game number 783 shall sell for twenty dollars ($20) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 783 shall contain fifty (50) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Ten (10) play symbols and play symbol captions representing numbers shall appear in the area labeled "WINNING NUMBERS". Forty (40) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" arranged in pairs representing numbers, or a picture of an ice cube and prize amounts.**

(b) The play symbols and play symbol captions in scratch-off game number 783, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:
(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELV
(12) 12
TLV
(13) 13
TRN
(14) 14
FRN
(15) 15
FTN
(16) 16
SXT
(17) 17
SVT
(18) 18
ETN
(19) 19
NTN
(20) 20
TWY
(21) 21
TWN
(22) 22
TWT
(23) 23
TWR
(24) 24
TWF
(25) 25
TWV
(26) 26
TWS

(27) 27
TSN
(28) 28
TWE
(29) 29
TNI
(30) 30
TTY
(31) 31
THO
(32) 32
THT
(33) 33
TTH
(34) 34
TTF
(35) 35
THF
(36) 36
THS
(37) 37
TTS
(38) 38
THE
(39) 39
THN
(40) 40
FRY
(41) 41
FRO
(42) 42
FRT
(43) 43
FTH
(44) 44
FRF
(45) 45
FRV
(46) 46
FRS
(47) 47
FSN
(48) 48
FRE
(49) 49
FNI
(50) 50
FTY
(51) 51
FYO
(52) 52
FYT
(53) 53
FYH
(54) 54
FYF
(55) 55
FYV
(56) 56
FYS
(57) 57
FYN
(58) 58
FYE
(59) 59
FNN
(60) 60
SXY
(61) Picture of ice cube
ICE

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 783 shall consist of the following possible play symbols and play symbol captions:

(1) $5.00
FIVE
(2) $10.00
TEN
(3) $20.00
TWENTY
(4) $25.00
TWY FIV
(5) $40.00
FORTY
(6) $50.00
FIFTY
(7) $100
ONE HUN
(8) $200
TWO HUN
(9) $500
FIVE HUN
(10) $1,000
ONE THOU
(11) $10,000
TEN THOU
(12) $250,000
TWHNFY THOU

SECTION 4. **The holder of a ticket in scratch-off game number 783 shall remove the latex material covering the fifty (50) play symbols and play symbol captions. If any of the "YOUR NUMBERS" play symbols and play symbol captions match any of the "WINNING NUMBERS" play symbols and play symbol captions, the holder is entitled to the paired prize amount. If the play symbol picture of an ice cube is exposed in "YOUR NUMBERS" area, the holder is entitled to win the prize shown without matching prize amounts in "WINNING NUMBERS" area. The matched prize play symbols, prize amounts, and approximate number of winners in scratch-off game number 783 are as follows:**

Number of Match(s) and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $10.00 + 1 – $10.00 (Ice Cube)	$20	96,000
1 – $20.00	$20	96,000
1 – $5.00 (Ice Cube) + 2 – $10.00	$25	48,000
1 – $25.00	$25	48,000
2 – $5.00 + 3 – $10.00	$40	24,000
3 – $10.00 + 1 – $10.00 (Ice Cube)	$40	12,000
1 – $40.00	$40	12,000
10 – $5.00	$50	12,000
4 – $10.00 + 1 – $10.00 (Ice Cube)	$50	6,000
1 – $50.00	$50	6,000
20 – $5.00	$100	12,000
9 – $10.00 + 1 – $10.00 (Ice Cube)	$100	6,000
1 – $100	$100	6,000
20 – $10.00	$200	2,500
10 – $20.00	$200	2,250
1 – $10 + 2 – $20 + 2 – $50 (Ice Cube)	$200	2,250
4 – $50.00	$200	2,250
1 – $200	$200	2,250
15 – $20.00 + 4 – $50.00	$500	750
10 – $50.00	$500	700
6 – $50 + 1 – $100 + 1 – $100 (Ice Cube)	$500	700
5 – $100	$500	700
1 – $500	$500	700
20 – $50.00	$1,000	200
10 – $50.00 + 5 – $100	$1,000	200
10 – $100	$1,000	200
4 – $200 + 1 – $200 (Ice Cube)	$1,000	200
1 – $1,000	$1,000	200
20 – $500	$10,000	30
1 – $10,000	$10,000	20
1 – $250,000	$250,000	2

SECTION 5. **(a) There shall be approximately one million two hundred thousand (1,200,000) scratch-off tickets initially available in scratch-off game number 783.**

(b) The odds of winning a prize in scratch-off game number 783 are approximately 1 in 3.00.

(c) All reorders of tickets for scratch-off game number 783 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in scratch-off game number 783 is October 31, 2006.**

SECTION 7. **This rule shall expire November 30, 2006.**

LSA Document #05-310(E)
Filed with Secretary of State: October 18, 2005, 1:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-311(E)

DIGEST

Adds 65 IAC 4-454 concerning scratch-off game number 814. Effective October 19, 2005.

65 IAC 4-454

SECTION 1. 65 IAC 4-454 IS ADDED TO READ AS FOLLOWS:

Rule 454. Scratch-Off Game 814

65 IAC 4-454-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this scratch-off game is "Scratch-Off Game Number 814, Double Crossword". *(State Lottery Commission; 65 IAC 4-454-1; emergency rule filed Oct 19, 2005, 1:45 p.m.: 29 IR 826)*

65 IAC 4-454-2 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. Scratch-off tickets in scratch-off game number 814 shall sell for two dollars ($2) per ticket. *(State Lottery Commission; 65 IAC 4-454-2; emergency rule filed Oct 19, 2005, 1:45 p.m.: 29 IR 826)*

65 IAC 4-454-3 Play symbols and play symbol captions
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. (a) Each scratch-off ticket in scratch-off game number 814 shall contain eighteen (18) play symbols and one (1) play symbol with a play symbol caption in the game play data area all concealed under a large spot of latex material. A large box on the left side of each ticket shall contain a crossword grid filled in with an array of alphabetic letters. A chart labeled "PRIZE LEGEND" shall appear to the right of the crossword grid and shall contain a table setting forth prize requirements and amounts. A box labeled "YOUR LETTERS" shall appear to the right of the "PRIZE LEGEND" and shall contain eighteen (18) play symbols repre-

senting alphabetic letters. One (1) play symbol and play symbol caption shall appear in the small box above "YOUR LETTERS" that is labeled "BONUS".

(b) The possible play symbols appearing in the box labeled "YOUR LETTERS" shall be randomly selected from the twenty-six (26) letters of the English alphabet. Each such letter shall be expressed as a capital letter.

(c) The play symbols and play symbol captions appearing in the box labeled "BONUS" shall consist of the following possible play symbols and play symbol captions:

(1) 1X
1TIME
(2) 2X
2TIMES

(State Lottery Commission; 65 IAC 4-454-3; emergency rule filed Oct 19, 2005, 1:45 p.m.: 29 IR 826)

65 IAC 4-454-4 How to play; determination of prize winners

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

Sec. 4. (a) The holder of a ticket in scratch-off game number 814 shall remove the latex material covering the eighteen (18) play symbols in the "YOUR LETTERS" box and the play symbol and play symbol caption in the "BONUS" box. The holder must then remove the latex material from all letters on the crossword grid that match those exposed in the "YOUR LETTERS" box and determine whether the newly exposed letters form words. If at least four (4) words are formed from the newly exposed letters, the holder is entitled to the prize identified on the "PRIZE LEGEND".

(b) In scratch-off game number 814, letters combined to form words on the crossword grid must appear in an unbroken horizontal or vertical sequence. For purposes of this rule, a word must contain at least three (3) letters. Words cannot be formed by linking letters diagonally or reading right to left or bottom to top.

(c) If four (4) or more words are formed, the holder is entitled only to the highest prize identified on the "PRIZE LEGEND" chart. Prizes are not cumulative.

(d) Prizes shall be available to holders of winning tickets in scratch-off game number 814 in accordance with the following:

Number of Words and Doubler	Prize Amount	Approximate Number of Winners
4 words	$2	270,000
4 words + 2X	$4	120,000
5 words	$5	105,000
5 words + 2X	$10	105,000
6 words	$10	30,000
7 words	$25	15,000
8 words	$50	1,875
8 words + 2X	$100	1,875
9 words	$100	1,875
10 words	$1,000	200
11 words	$20,000	3

(State Lottery Commission; 65 IAC 4-454-4; emergency rule filed Oct 19, 2005, 1:45 p.m.: 29 IR 827)

65 IAC 4-454-5 Number of tickets; odds of winning; reorders

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

Sec. 5. (a) There shall be approximately three million (3,000,000) scratch-off tickets initially available in scratch-off game number 814.

(b) The odds of winning a prize in scratch-off game number 814 are approximately 1 in 4.61.

(c) All reorders of tickets for scratch-off game number 814 shall have the same:

(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;

as contained in the initial order. *(State Lottery Commission; 65 IAC 4-454-5; emergency rule filed Oct 19, 2005, 1:45 p.m.: 29 IR 827)*

65 IAC 4-454-6 Last claim date

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

Sec. 6. The last day to claim a prize in scratch-off game number 814 is sixty (60) days after the end of the game. Game end dates are available on the commission's web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any scratch-off ticket retailer. *(State Lottery Commission; 65 IAC 4-454-6; emergency rule filed Oct 19, 2005, 1:45 p.m.: 29 IR 827)*

LSA Document #05-311(E)
Filed with Secretary of State: October 19, 2005, 1:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-312(E)

DIGEST

Amends 65 IAC 4-2-6 to clarify scratch-off ticket dispute procedures. Amends 65 IAC 5-2-6 to clarify draw ticket dispute procedures. Effective October 24, 2005.

65 IAC 4-2-6
65 IAC 5-2-6

SECTION 1. 65 IAC 4-2-6, AS AMENDED AT 28 IR 2153, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

65 IAC 4-2-6 Disputes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30-11

Sec. 6. (a) If a person claiming a prize in a scratch-off game is unable to produce the alleged winning scratch-off ticket, the commission shall not pay the claimed prize unless the person presents terminal-generated evidence sufficient to establish the validity of the claim. If a person claiming a prize in a scratch-off game presents a scratch-off ticket that is mutilated or unreadable, the commission shall not pay the claimed prize unless there is sufficient readable data remaining on the scratch-off ticket to establish the validity of the claim. Any person making a claim under this subsection may submit an affidavit to the director setting forth all facts ~~witnesses,~~ ~~and~~ ~~supporting~~ ~~information~~ surrounding the person's claim. The director, in the director's sole discretion, may authorize that the prize be paid to the claimant if satisfied that the validity of the claim has been established. If any prize claimed under this subsection exceeds ~~one~~ **five** thousand dollars ~~($1,000),~~ **($5,000),** a determination by the director to pay the prize shall be reviewed and authorized by the commission.

(b) The director may, solely at the director's option, replace a scratch-off ticket which is not a valid ticket or which is otherwise determined not to be a valid ticket or which is otherwise determined not to be a winning scratch-off ticket, despite a claim to the contrary, with an unplayed scratch-off ticket or scratch-off tickets of equivalent sale price for any current scratch-off game. In the event a defective scratch-off ticket is purchased, the only responsibility or liability of the commission shall be the replacement of the defective scratch-off ticket with another unplayed scratch-off ticket or scratch-off tickets of equivalent sale price from a current scratch-off game. *(State Lottery Commission; 65 IAC 4-2-6; emergency rule filed Oct 2, 1989, 2:10 p.m.: 13 IR 304; emergency rule filed Jan 24, 1990, 4:00 p.m.: 13 IR 1072;emergency rule filed Sep 25, 1998, 11:21 a.m.: 22 IR 474; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Feb 25, 2005, 12:00 p.m.: 28 IR 2153, eff Mar 1, 2005; emergency rule filed Oct 24, 2005, 2:50 p.m.: 29 IR 828)*

SECTION 2. 65 IAC 5-2-6, AS AMENDED AT 28 IR 2153, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

65 IAC 5-2-6 Disputes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30-11

Sec. 6. (a) If a person claiming a prize in a draw game is unable to produce the alleged winning **draw** ticket, the commission shall not pay the claimed prize unless the person presents terminal-generated evidence sufficient to establish the validity of the claim. If a person claiming a prize in a draw game presents a draw ticket that is mutilated or unreadable, the commission shall not pay the claimed prize unless there is sufficient readable data remaining on the draw ticket to establish the validity of the claim. Any person making a claim under this subsection may submit an affidavit to the director setting forth all facts ~~witnesses,~~ ~~and~~ ~~supporting~~ ~~information~~ surrounding the person's claim. The director, in the director's sole discretion, may authorize that the prize be paid to the claimant if satisfied that the validity of the claim has been established. The director shall not authorize payment of any prize under this subsection until the period for claiming prizes for the selection event applicable to the draw ticket involved has elapsed, and the director shall consider the amount of prizes paid with respect to the selection event involved in determining whether to pay the prize. If any prize claimed under this subsection exceeds ~~one~~ **five** thousand dollars ~~($1,000),~~ **($5,000),** a determination by the director to pay the prize shall be reviewed and authorized by the commission.

(b) The director may, solely at the director's option, replace a draw ticket which is not a valid draw ticket or which is otherwise determined not to be a winning draw ticket, despite a claim to the contrary, with a new draw ticket or draw tickets of equivalent sales price for the same draw game or another draw game. In the event a defective draw ticket is purchased, the only responsibility or liability of the commission shall be the replacement of the defective draw ticket with another draw ticket or draw tickets of equivalent sales price from the same draw game or another draw game. *(State Lottery Commission; 65 IAC 5-2-6; emergency rule filed May 7, 1990, 2:10 p.m.: 13 IR 1742; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Feb 25, 2005, 12:00 p.m.: 28 IR 2153, eff Mar 1, 2005; emergency rule filed Oct 24, 2005, 2:50 p.m.: 29 IR 828)*

LSA Document #05-312(E)
Filed with Secretary of State: October 24, 2005, 2:50 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-313(E)

DIGEST

Repeals 65 IAC 4-206, 65 IAC 4-330, 65 IAC 4-331, 65 IAC 4-339, 65 IAC 4-346, 65 IAC 4-348, 65 IAC 4-349, 65 IAC 4-352, 65 IAC 4-355, 65 IAC 4-438, 65 IAC 4-444, and 65 IAC 4-451. Partially effective October 24, 2005, partially effective December 1, 2005, and partially effective December 22, 2005.

65 IAC 4-206
65 IAC 4-330
65 IAC 4-331
65 IAC 4-339
65 IAC 4-346
65 IAC 4-348
65 IAC 4-349
65 IAC 4-352
65 IAC 4-355
65 IAC 4-438
65 IAC 4-444
65 IAC 4-451

SECTION 1. THE FOLLOWING ARE REPEALED: 65 IAC 4-330; 65 IAC 4-331; 65 IAC 4-346; 65 IAC 4-348; 65 IAC 4-352; 65 IAC 4-355; 65 IAC 4-438; 65 IAC 4-444; 65 IAC 4-451.

SECTION 2. THE FOLLOWING ARE REPEALED: 65 IAC 4-339; 65 IAC 349 *[sic., 65 IAC 4-349]*.

SECTION 3. 65 IAC 4-206 IS REPEALED.

SECTION 4. SECTION 2 of this document takes effect December 1, 2005.

SECTION 5. SECTION 3 of this document takes effect December 22, 2005.

LSA Document #05-313(E)
Filed with Secretary of State: October 24, 2005, 2:50 p.m.

TITLE 71 INDIANA HORSE RACING COMMISSION

LSA Document #05-246(E)

DIGEST

Adds 71 IAC 1-1-1.5 and 71 IAC 1.5-1-1.5 concerning account wagering definition. Adds 71 IAC 1-1-75.5 and 71 IAC 1.5-1-71.5 concerning pari-mutuel voucher or voucher definition. Amends 71 IAC 9-1-14 concerning minimum wagers. Effective August 9, 2005. *NOTE: IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Secretary of State. This document was filed with the Secretary of State on November 9, 2005.*

71 IAC 1-1-1.5
71 IAC 1-1-75.5
71 IAC 1.5-1-1.5
71 IAC 1.5-1-71.5
71 IAC 9-1-14

SECTION 1. 71 IAC 1-1-1.5 IS ADDED TO READ AS FOLLOWS:

71 IAC 1-1-1.5 "Account wagering" defined
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1.5. "Account wagering" means a form of pari-mutuel wagering in which an individual may deposit money in an account, in that person's name, with an association and then use the current balance in the account to place pari-mutuel wagers. *(Indiana Horse Racing Commission; 71 IAC 1-1-1.5; emergency rule filed Nov 9, 2005, 8:00 a.m.: 29 IR 829, eff Aug 9, 2005 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Secretary of State. This document was filed with the Secretary of State on November 9, 2005.])*

SECTION 2. 71 IAC 1-1-75.5 IS ADDED TO READ AS FOLLOWS:

71 IAC 1-1-75.5 "Pari-mutuel voucher" or "voucher" defined
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 75.5. "Pari-mutuel voucher" or "voucher" means a bearer instrument, paper or plastic, issued by an association, and approved by the commission, acknowledging that a specified dollar amount is owned by a patron and held by an association, including winnings from pari-mutuel wagering. A pari-mutuel voucher or voucher is the same as cash and is not part of any pari-mutuel pool. *(Indiana Horse Racing Commission; 71 IAC 1-1-75.5; emergency rule filed Nov 9, 2005, 8:00 a.m.: 29 IR 829, eff Aug 9, 2005 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Secretary of State. This document was filed with the Secretary of State on November 9, 2005.])*

SECTION 3. 71 IAC 1.5-1-1.5 IS ADDED TO READ AS FOLLOWS:

71 IAC 1.5-1-1.5 "Account wagering" defined
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1.5. "Account wagering" means a form of pari-mutuel wagering in which an individual may deposit money in an account, in that person's name, with an association and then use the current balance in the account to place pari-mutuel wagers. *(Indiana Horse Racing Commission; 71 IAC 1.5-1-1.5; emergency rule filed Nov 9, 2005, 8:00 a.m.: 29 IR 829, eff Aug 9, 2005 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Secretary of State. This document was filed with the Secretary of State on November 9, 2005.])*

SECTION 4. 71 IAC 1.5-1-71.5 IS ADDED TO READ AS FOLLOWS:

71 IAC 1.5-1-71.5 "Pari-mutuel voucher" or "voucher" defined
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 71.5. "Pari-mutuel voucher" or "voucher" means a bearer instrument, paper or plastic, issued by an association, and approved by the commission, acknowledging that a

specified dollar amount is owned by a patron and held by an association, including winnings from pari-mutuel wagering. A pari-mutuel voucher or voucher is the same as cash and is not part of any pari-mutuel pool. *(Indiana Horse Racing Commission; 71 IAC 1.5-1-71.5; emergency rule filed Nov 9, 2005, 8:00 a.m.: 29 IR 829, eff Aug 9, 2005 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Secretary of State. This document was filed with the Secretary of State on November 9, 2005.])*

SECTION 5. 71 IAC 9-1-14 IS AMENDED TO READ AS FOLLOWS:

71 IAC 9-1-14 Prior approval required for betting pools
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 14. (a) An association that desires to offer new forms of wagering must apply in writing to the commission and receive written approval prior to implementing the new betting pool.

(b) The association may suspend previously approved forms of wagering with the prior approval of the commission. Any carryover shall be held until the suspended form of wagering is reinstated. An association may request approval of a form of wagering or separate wagering pool for specific performances.

(c) An association desiring to accept minimum wagers as the host track for less than one dollar ($1) or more than two dollars ($2) shall first apply in writing to the commission and obtain specific approval of the commission or its executive director. *(Indiana Horse Racing Commission; 71 IAC 9-1-14; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1181; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Nov 9, 2005, 8:00 a.m.: 29 IR 830, eff Aug 9, 2005 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Secretary of State. This document was filed with the Secretary of State on November 9, 2005.])*

LSA Document #05-246(E)
Filed with Secretary of State: November 9, 2005, 8:00 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-307(E)

DIGEST

Temporarily amends 312 IAC 18-3-18 pertaining to entomology and plant pathology to regulate the emerald ash borer (Agrilus planipennis) as a pest or pathogen, to provide standards for quarantine in Lima Township and Newbury Township in LaGrange County, and Root Township and Washington Township in Adams County, which are infested with the species. Repeals LSA Document #05-212(E), printed at 28 IR 3608, that established quarantine for Lima Township and Newbury Township in LaGrange County, exclusively. Effective October 17, 2005.

SECTION 1. **(a) This SECTION is supplemental to 312 IAC 18-3-18(c).**

(b) The following counties include an infested area and are regulated under 312 IAC 18-3-18:
(1) Lima Township and Newbury Township in LaGrange County.
(2) Root Township and Washington Township in Adams County.

SECTION 2. **SECTION 1 of this document expires October 1, 2006.**

SECTION 3. LSA Document #05-212(E) IS REPEALED.

LSA Document #05-307(E)
Filed with Secretary of State: October 17, 2005, 3:00 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-308(E)

DIGEST

Temporarily amends 312 IAC 9, concerning the taking of raccoons at several state parks, with awareness that the regulation of wild animals in Indiana is the responsibility of the department of natural resources, and the director is responsible for controlling wild animals in a state park if the wild animals pose an unusual hazard to the health or safety of one or more individuals, and the director finds that the density of the raccoon population has risen at the listed state parks to a level that poses a health risk to persons present on those properties, health risks posed as a result of diseases that may be carried by the raccoons, including rabies and raccoon round worms, and because the density has contributed to raccoons exhibiting behavior that is characterized by aggressiveness and a lack of fear toward humans, a behavior that poses a hazard to humans and particularly to small children, and therefore, in order to protect individuals from the potential for adverse health or safety consequences, the property manager of any state park listed may authorize a person or persons to take any raccoon from that state park. Effective October 17, 2005.

SECTION 1. **(a) Notwithstanding 312 IAC 9-2-11, 312 IAC 8-2, and any other provision governing taking a wild animal within a state park, an individual qualified under this SECTION may take any raccoon from or within the state parks listed in subsection (b).**

(b) The state parks to which this document applies are as follows:

(1) Brown County State Park.
(2) Chain O'Lakes State Park.
(3) Charlestown State Park.
(4) Clifty Falls State Park.
(5) Falls of the Ohio State Park.
(6) Fort Harrison State Park.
(7) Harmonie State Park.
(8) Indiana Dunes State Park.
(9) Lincoln State Park.
(10) McCormick's Creek State Park.
(11) Mounds State Park.
(12) Ouabache State Park.
(13) Pokagon State Park.
(14) Potato Creek State Park.
(15) Prophetstown State Park.
(16) Shades State Park.
(17) Shakamak State Park.
(18) Spring Mill State Park.
(19) Summit Lake State Park.
(20) Tippecanoe River State Park.
(21) Turkey Run State Park.
(22) Versailles State Park.
(23) Whitewater State Park.

(c) In order to qualify under subsection (a), a person must satisfy both of the following requirements:

(1) Possess written authorization from the property manager of the referenced state park to act under this document.
(2) Possess a nuisance wild animal control permit issued under 312 IAC 9-10-11 if a raccoon is taken other than from November 15, 2005, through January 31, 2006.

LSA Document #05-308(E)
Filed with Secretary of State: October 17, 2005, 3:00 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-317(E)

DIGEST

Temporarily amends 312 IAC 18-3-18 and LSA Document #05-307(E), pertaining to entomology and plant pathology that regulates the emerald ash borer (Agrilus planipennis) as a pest or pathogen, by applying standards for quarantine to White River Township in Randolph County, which is infested with the species. Effective October 31, 2005.

SECTION 1. **(a) This SECTION is supplemental to 312 IAC 18-3-18(c) and to LSA Document #05-307(E), published at 29 IR** *[830]***.**

(b) White River Township in Randolph County contains an area infested with emerald ash borers, and the township is regulated under 312 IAC 18-3-18.

SECTION 2. **SECTION 1 of this document expires October 1, 2006.**

LSA Document #05-317(E)
Filed with Secretary of State: October 31, 2005, 3:20 p.m.

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

LSA Document #05-161

The Indiana Department of Transportation gives notice that a second public hearing has been scheduled to receive comments on the proposed rule, LSA Document #05-161, printed at 29 IR 59. The second Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on ***December 22, 2005 at 10:00 a.m.*** *at the Indiana Government Center-North, 100 North Senate Avenue, Room N730, Indianapolis, Indiana 46204, the Indiana Department of Transportation will hold a second public hearing on proposed new rules related to utility facility relocations on certain construction projects.*

The Department of Transportation is required to adopt these rules by IC 8-23-2-5. Since the proposed rule merely formalizes activities that are already being performed by affected parties, no adverse economic impact is anticipated. It is believed that no small business will be subject to this rule; however, if affected, since these duties are already being performed and this rule merely formalizes the process, no additional costs are anticipated.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N730 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are available for public inspection.

Richard K. Smutzer
Chief Engineer
Indiana Department of Transportation

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-279(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of LSA Document #04-279(APCB), printed at 29 IR 152, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8, and IC 13-14-9, notice is hereby given that on ***February 1, 2006****, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 6.5 and 326 IAC 6.8.*

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 amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027, press 0, and ask for ext. 2-8229 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file with the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

LSA Document #05-319

Under IC 4-22-2-23, the Office of Attorney General for the State intends to adopt a rule concerning the following:

OVERVIEW: Adds a rule establishing the proper law enforcement agencies for purposes of IC 4-1-10-4. Defines the term "express consent" as it relates to the release of an individual's Social Security number under IC 4-1-10-5. Establishes mitigating factors that the attorney general may consider in making a determination between a negligent release of Social Security numbers and a knowing, intentional, or reckless release. Establishes requirements for notification to the Attorney General when Social Security numbers are released. Submit questions or comments to the Office of the Attorney General, Attention: Jason Thompson, Deputy Attorney General, Indiana Government Center-South, 302 West Washington Street, Fifth Floor, Indianapolis, Indiana 46204, or by electronic mail to jthompson@atg.state.in.us. Statutory authority: IC 4-1-10-13.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Jason Thompson, Deputy Attorney General
Office of the Indiana Attorney General
Indiana Government Center-South
302 West Washington Street, 5th Floor
Indianapolis, IN 46204
(317) 233-2413
jthompson@atg.state.in.us

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

LSA Document #05-318

Under IC 4-22-2-23, the Indiana Department of Administration intends to adopt a rule concerning the following:

OVERVIEW: Amends 25 IAC 2 relating to rules governing the public works division. The amendments will include, but may not be limited to, changes to duties of the public works division, a designer's bidding duty, threshold for prequalification, application for prequalification approval, criteria for bidding, bidding process, and nonpayment of subcontractors. Amendments relating to the Certification Board, purposes of Certification Board, prequalification procedures and requirements, bid acceptance, application of foreign corporations, and application of designers. Amendments to qualifications for certification in architecture, professional engineering, and nonlicensed fields. Adds 25 IAC 2-16-9 regarding fees for submission, renewal, extension, and/or reconsideration of an application for prequalification certification. The amendments will also make technical or clarifying corrections. Questions or comments concerning the proposed rules may be directed to: Director, Public Works Division, Indiana Department of Administration, IGCS, Room W467, 402 West Washington Street, Indianapolis, IN 46204 or by electronic mail to tcoulter@idoa.in.gov. Statutory authority: IC 4-13-2-9; IC 4-13.6-3-1.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Davina L. Patterson
Indiana Department of Administration
402 W. Washington Street, RM W469
Indianapolis, IN 46204
(317) 232-3073
dpatterson@idoa.in.gov

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

LSA Document #05-329

Under IC 4-22-2-23, the Indiana Department of Transportation intends to adopt a rule concerning the following:

OVERVIEW: Amends 105 IAC 11 to update definitions and terms to reflect current practice, modify the procedure for prequalification, investigation, sanction, and appeal of contractors, allow and establish a formal procedure for electronic bidding on state highway construction contracts, all plans and contract documents to be provided to potential contractors electronically and including a mechanism for electronic submission of binding bids, required bonds, and digital signatures. Comments or questions may be directed to Robert Cales at Indiana Department of Transportation, 100 North Senate Avenue, Room N642, Indianapolis, IN 46204, by phone at (317) 233-4794, or by electronic mail to rcales@indot.state.in.us. Statutory authority: IC 8-23-2-6; IC 8-23-10.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Robert Cales
Indiana Department of Transportation
100 North Senate Avenue, Room N642
Indianapolis, IN 46204
(317) 233-4794
rcales@indot.state.in.us.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-324

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 5-9, which establishes watercraft restrictions on waterways owned by public utilities, by adding a new section, 312 IAC 5-9-5, to govern watercraft operations on Sullivan Lake in Sullivan County. Public questions and comments may be sent to the Division of Hearings, Natural Resources Commission, Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, IN 46204, (317) 233-3322, slucas@nrc.in.gov. Statutory authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Stephen L. Lucas
Division of Hearings
Natural Resources Commission
Indiana Government Center-South
402 West Washington Street, Room W272
Indianapolis, IN 46204
(317) 233-3322
slucas@nrc.in.gov

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #05-315

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: The proposal will add and amend various rules in 345 IAC to accommodate electronic certificates of veterinary inspection and other animal health forms and clarify and prescribe procedures for creation, distribution, submission, retention, and access to certificates of veterinary inspection and other animal health forms. The proposal may amend requirements for veterinary inspections and certifications for animals to be exhibited in the state. Statutory authority: IC 15-2.1-3-19.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Gary L. Haynes
Director of Legal Affairs
Indiana State Board of Animal Health
805 Beachway Drive, Suite 50
Indianapolis, IN 46224
(317) 227-0300
ghaynes@boah.state.in.us.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-314

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Adds rules regarding the admission, maintenance, and discharge of members of the Indiana Veterans' Home. Written comments may be submitted to the Indiana State Department of Health, Operational Services Commission, 2 North Meridian Street, 2F, Indianapolis, Indiana 46204. Statutory authority: IC 10-17-9-7(b); IC 10-17-9-7(c); IC 16-19-3-5.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Lance Rhodes
Indiana State Department of Health
2 North Meridian Street, 2F
Indianapolis, Indiana 46204
(317) 233-7102
lrhodes@isdh.in.gov

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-320

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Amends 410 IAC 7-22-15 to bring the rule into compliance with statute by adding exemptions to the food handler requirements in addition to additional entities that are exempt from the food handler requirements. Written comments may be submitted to the Indiana State Department of Health, Health Care Regulatory Services Commission, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-42-5.2-13.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Terry Whitson
Indiana State Department of Health
2 North Meridian Street, 5A
Indianapolis, Indiana 46204
(317) 233-7022
twhitson@isdh.in.gov

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-321

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Adds rules to require ambulatory outpatient surgical centers, abortion clinics, and birthing centers to implement a medical errors reporting system and report medical errors reporting data to the department. Written comments may

be submitted to the Indiana State Department of Health, Health Care Regulatory Services Commission, 2 North Meridian Street, #5A, Indianapolis, Indiana 46204. Statutory authority: IC 16-21-1-7; IC 16-40-4-9.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Terry Whitson
Indiana State Department of Health
2 North Meridian Street, 5A
Indianapolis, Indiana 46204
(317) 233-7022
twhitson@isdh.in.gov

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-328

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Amends 410 IAC 6-6 to bring the rule into compliance with statute by adding and amending definitions to the mobile home park requirements and amending installation requirements. Amends 410 IAC 6-6 to update and clarify requirements relating to health, sanitation, safety, and water services. Written comments may be submitted to the Indiana State Department of Health, Health Care Regulatory Services Commission, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-19-3-4; IC 16-41-27-8.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Terry Whitson
Indiana State Department of Health
2 North Meridian Street, 5A
Indianapolis, Indiana 46204
(317) 233-7022
twhitson@isdh.in.gov

TITLE 816 BOARD OF BARBER EXAMINERS

LSA Document #05-323

Under IC 4-22-2-23, the Board of Barber Examiners intends to adopt a rule concerning the following:

OVERVIEW: Amends 816 IAC 1-2-18 to allow barber school students to transfer from one barber school to another barber school without board approval and to establish the transfer process. Questions or comments concerning the proposed rule may be directed to: Indiana Professional Licensing Agency, ATTENTION: Board Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, Indiana 46204-2700 or by electronic mail at pla12@pla.state.in.us. Statutory authority: 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 852 INDIANA OPTOMETRY BOARD

LSA Document #05-325

Under IC 4-22-2-23, the Indiana Optometry Board intends to adopt a rule concerning the following:

OVERVIEW: Amends 852 IAC 1-16-1 concerning continuing education requirements for renewal of license to revise the number of continuing education hours for renewal. Amends 852 IAC 1-16-2 concerning the responsibilities of licensees, including the time a licensee has to retain verification of completion of continuing education. Amends 852 IAC 1-16-3 concerning application for approval to address when a sponsoring organization must file an application for approval and to establish information required for the record of attendance that sponsoring organizations must provide. Amends 852 IAC 1-16-6 concerning continuing education sources to revise the list of board-approved activities that may satisfy the continuing education requirements. Adds 852 IAC 1-16-7 to establish the requirements for self-study continuing education courses to be accepted as continuing education for license renewal. Adds 852 IAC 1-16-8 to establish continuing education programs for optometrists sponsored by organizations that are deemed approved. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, Indiana Optometry Board, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla8@pla.state.in.us. Statutory authority: IC 25-24-1-1.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Cindy A. Vaught
Indiana Professional Licensing Agency
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-2054
cvaught@pla.in.gov

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Proposed Rule
LSA Document #05-252

DIGEST

Amends 50 IAC 4.2-4-3 to establish procedures for the valuation of computer application software in conformance with P.L.214-2005 (HEA 1120-2005). Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to This Rule:

The Department cannot accurately estimate the number of small businesses that will be directly affected by the valuation of application software governed by this rule. The valuation reduction provided under IC 6-1.1-31-7 and implemented by this rule will be available for businesses that possess and specifically identify application software as part of their Business Personal Property Return.

Estimated Average Annual Administrative Costs That Small Businesses Will Incur:

The Department cannot estimate the annual administrative costs that this rule will require. The administrative cost or associated reporting or record keeping cost to a small business will depend on the specific valuation of application software owned, controlled, or possessed by the small businesses, and/or the employment of a professional appraiser in order to value application software. A small business seeking to value application software to isolate the cost in order to remove that cost from assessable computer equipment would have to file an annual personal property return.

Estimated Total Annual Economic Impact on Small Businesses:

The Department estimates that there will be minimal impact on small businesses as a result of compliance with this rule.

- Justification of Requirements or Costs on Small Businesses Where Rule Is Not Expressly Required by Law: Businesses may incur compliance costs, such as the employment of a professional appraiser, incurred by small businesses in connection with the filing of the required annual personal property return to value the cost of application software. However, the employment of a professional appraiser is an option for the taxpayer and is not required by this rule.
- Supporting Data, Studies, and Analyses: The Department reviewed the Fiscal Impact Statement for House Enrolled Act 1120-2005 prepared by Legislative Services Agency. The Department has not relied on any other formal studies in reaching these estimates.

Regulatory Flexibility Analysis of Alternative Methods:

A method for the valuation of computer application software is required by P.L.214-2005 (HEA 1120-2005), the Department has performed minimal analysis of alternatives to this proposed rule.

- Explanation of Preliminary Determination: The adoption of this rule was mandated by P.L.214-2005 (HEA 1120-2005) to identify the fair market value of application software.
- Supporting Data, Studies, and Analyses: The Department reviewed the Fiscal Impact Statement for House Enrolled Act 1120-2005 (P.L.214-2005), prepared by Legislative Services Agency. The Department did not rely on any other formal studies in its decision not to employ alternatives to rulemaking.

50 IAC 4.2-4-3

SECTION 1. 50 IAC 4.2-4-3 IS AMENDED TO READ AS FOLLOWS:

50 IAC 4.2-4-3 Fully depreciated, retired, or nominally valued property; computer equipment; report and valuation

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-1-11

Sec. 3. (a) Depreciable personal property, as defined in ~~50 IAC 4.2-1-1(h),~~ **50 IAC 4.2-1-1(i),** that has not been retired from use must be reported for personal property assessment purposes whether or not the cost of ~~such~~ **the** property has been:

(1) removed from; ~~the taxpayer's books and records, has been~~

(2) recorded on; ~~the taxpayer's books and records,~~ or ~~has been~~

(3) recorded at a nominal value on;

the taxpayer's books and records.

(b) ~~Restoration of depreciable personal property written off.~~ Any fully depreciated personal property that:

(1) has been written off the taxpayer's books and records; and

(2) is:

(A) on hand at the tax situs; and

(B) not permanently retired;

on the assessment date;

must be reported in the return. The cost of ~~such~~ **the** property must be clearly shown as an adjustment in the space provided on the tax return as provided in section 4 of this rule.

(c) ~~Permanently retired depreciable personal property defined.~~ "Permanently retired depreciable personal property" means depreciable personal property that has been removed from the manufacturing process on the assessment date, or has been removed from services other than manufacturing on the assessment date, and is awaiting disposition, and must be scheduled to be scrapped, removed, or disposed of and will be considered to be permanently retired providing the taxpayer actually scraps or sells such property.

(1) ~~Adjustment for permanently retired depreciable personal property.~~ Depreciable personal property that is:

(A) on hand at the tax situs on the assessment date, included in the cost per books as reported by the taxpayer in their return; and

(B) permanently retired on the assessment date as herein defined;

is subject to an adjustment as herein provided if the taxpayer so elects.

(2) ~~Amount of adjustment.~~ The cost per books of permanently retired depreciable property can be taken as an adjustment from book cost of depreciable property on the return provided the cost of ~~such~~ **the** property is included in the cost per books actually reported on the return.

(3) ~~Eligibility.~~ In order to qualify for this adjustment, a taxpayer will need to substantiate that the property was:

(A) permanently retired; and

(B) not in use.

(d) ~~Valuation of permanently retired depreciable personal property.~~ Permanently retired depreciable personal property should be valued at its net scrap or net sale value. The valuation of this property:

(1) should be shown separately on the tax return; and

(2) will not be subject to the thirty percent (30%) limitation of original cost.

(e) ~~Valuation of depreciable personal property with a nominal value.~~ Depreciable personal property recorded on the books and records at a nominal or no value must be recorded at its actual acquisition cost determined by reference to the insurable value in the year of acquisition for Indiana property tax assessment purposes. This category of property would include, but not be limited to, bulk purchase or the acquisition of a going business concern.

(f) Valuation of computer equipment. Computers are made up of three (3) elements:

(1) hardware;

(2) operational software; and

(3) application software.

Computers (including hardware and operational software), must be reported at the actual acquisition cost regardless of how this property may be valued on the taxpayers books and records.

(g) Computers are made up of the following elements:

(1) Hardware. Hardware is composed of:

(A) mechanical;

(B) magnetic;

(C) electrical; and

(D) electronic;

devices and other components ~~which~~ **that** constitute the physical computer assembly.

(2) Operational software. The operational program:

(A) controls the hardware; ~~and~~

(B) actually makes the machine operational; ~~It~~

(C) is fundamental and necessary to the functioning of the computer hardware itself; ~~and~~

(D) performs such functions as loading, scheduling, supervision, and data management; ~~It~~

(E) represents the internalized instruction codes that translate information into a form usable by the equipment; ~~and~~

(F) controls the basic operations of the central processing unit to perform arithmetic ~~and/or~~ **or** logical operations, **or both,** automatically by means of programmed instructions; ~~It~~ **and**

(G) is not normally accessible or modifiable by the user.

(3) Application software. The application program is a written sequence of instructions which details the operations the equipment is to perform in order to achieve a specific objective of the user.

(h) If the value recorded on the books and records reflects charges for customer support services such as educational services, maintenance, or application software that relate to future periods and not to the value of the tangible personal property, ~~such~~ **the** charges may be deducted as nonassessable intangible personal property (to the extent that a separate charge or value can be identified).

(i) The true tax value at the time of acquisition of computer application software may be determined using the following:

(1) An independent, professional appraisal:

(A) must be made in conformance with generally accepted standards for appraisal practice;

(B) shall not be based on a contingent fee arrangement;

(C) shall include consideration of the cost, market, and income approaches; and

(D) shall distinguish the boundary in the equipment between exempt intangible application software and nonexempt tangible operational software.

The appraiser must have demonstrated competence in the valuation of software.

(2) In lieu of an independent professional appraisal, the taxpayer can evaluate existing assets already listed on its books and records and adjust them accordingly to reflect the software content using the valuation methods described in subdivision (1)(C).

~~(h)~~ **(j)** The allocation of interest incurred during construction and installation must be made (capitalized) for personal property tax purposes regardless of the fact that Section 263 of the Internal Revenue Code of 1986 is not applicable in certain cases. *(Department of Local Government Finance; 50 IAC 4.2-4-3; filed Dec 7, 1988, 9:35 a.m.: 12 IR 840, eff Mar 1, 1989; reinstated by IC 6-1.1-3-22, eff Jul 1, 2003)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 17, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana the Department of Local Government

Finance will hold a public hearing on a proposed amendment governing the valuation of computer application software.

This proposed rule does not impose any requirement or costs on a regulated entity not expressly required by state or federal law.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058(B) and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Amber Merlau St. Amour
Staff Attorney
Department of Local Government Finance

TITLE 240 STATE POLICE DEPARTMENT

Proposed Rule
LSA Document #05-287

DIGEST

Amends 240 IAC 1-4-3 to increase the maximum age at appointment for police employees and to remove the requirement for postsecondary education. Amends 240 IAC 1-4-24.1 to increase the mandatory retirement age for police employees. Amends 240 IAC 1-5-5 to remove the requirement of completing two years of appointment prior to withdrawing from the department in order to be eligible for reappointment. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

These changes will not add any additional costs to small businesses.

240 IAC 1-4-3
240 IAC 1-4-24.1
240 IAC 1-5-5

SECTION 1. 240 IAC 1-4-3 IS AMENDED TO READ AS FOLLOWS:

240 IAC 1-4-3 Applicant standards for appointment
Authority: IC 10-11-2-10
Affected: IC 10-11-1; IC 10-11-2

Sec. 3. Only those applicants for the position of police employee who meet the ~~following~~ initial standards **in this section** will be considered. **Applicants must meet the following requirements:**

(1) ~~Must~~ Be a United States citizen.

(2) ~~Must~~ Be at least twenty-one (21) years of age and less than ~~thirty-five (35)~~ **forty (40)** years of age when appointed as a police employee. The superintendent shall have the authority to recruit police employee applicants between eighteen (18) years of age and twenty-one (21) years of age, who otherwise meet all qualifications for the position of police employee, in order that the state police department may hire ~~such~~ **the** applicants in nonpolice vacancies.

(3) ~~Must~~ Be a high school graduate as evidenced by a diploma or equivalency diploma issued by an accredited high school.

~~(4) Must have successfully completed either of the following:~~

~~(A) Sixty (60) semester credit hours or ninety (90) quarter credit hours of postsecondary education. The credit hours must:~~

~~(i) have a minimum accumulated grade point average of 2.0 on a 4.0 grade scale; and~~

~~(ii) be evidenced by a certified transcript from an accredited college or university.~~

~~(B) One (1) of the following:~~

~~(i) At least three (3) years previous, full-time paid, successful sworn law enforcement experience having graduated from a state accredited police academy in an entry level law enforcement basic training curriculum, in which the essential job functions were performed at a satisfactory or above level, as witnessed by employer or documented by employee evaluations.~~

~~(ii) At least two (2) years of successful, active, military duty, honorably discharged or currently serving at the rank of E-4 or above, or an equivalent rank, in a United States military service.~~

~~(5) Must~~ **(4)** Possess a valid driving license to operate an automobile.

~~(6) Must~~ **(5)** Be willing **to do the following:**

(A) If appointed, to reside and serve any place within Indiana as designated by the superintendent.

~~(7) Must be willing~~ **(B)** To refrain from engaging in any political activity:

(i) prohibited by law; or

(ii) that would create a conflict of interest as an employee of the **state police** department.

(State Police Department; 240 IAC 1-4-3; filed Jan 6, 1983, 8:23 a.m.: 6 IR 322; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375; filed Jul 7, 1997, 8:10 a.m.: 20 IR 3005; filed Jan 24, 2000, 7:49 a.m.: 23 IR 1362)

SECTION 2. 240 IAC 1-4-24.1 IS AMENDED TO READ AS FOLLOWS:

240 IAC 1-4-24.1 Termination; mandatory retirement at 65 years of age
Authority: IC 10-11-2-10
Affected: IC 10-11-1; IC 10-11-2

Sec. 24.1. Police employees shall:

(1) be mandatorily retired on the day on which their ~~sixtieth~~ **sixth-fifth** birthday occurs, unless earlier retired for occupational qualification reasons; and ~~shall~~

(2) not be eligible for reemployment as a police officer.
(State Police Department; 240 IAC 1-4-24.1; filed Jul 7, 1997, 8:10 a.m.: 20 IR 3005; readopted filed Sep 9, 2003, 3:00 p.m.: 27 IR 286)

SECTION 3. 240 IAC 1-5-5 IS AMENDED TO READ AS FOLLOWS:

240 IAC 1-5-5 Reappointment exceptions
Authority: IC 10-11-2-10
Affected: IC 10-11-1; IC 10-11-2

Sec. 5. No person discharged from the **state police** department ~~or withdrawing before the completion of a two (2) year period of appointment~~ shall afterwards be eligible for reappointment. *(State Police Department; 240 IAC 1-5-5; filed Jan 6, 1983, 8:23 a.m.: 6 IR 330; readopted filed Oct 17, 2001, 10:05 a.m.: 25 IR 935)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 27, 2005 at 9:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room N335, Indianapolis, Indiana the State Police Department will hold a public hearing on proposed amendments to increase the maximum age at appointment for police employees and remove the requirement for postsecondary education, to increase the mandatory retirement age for police employees, and to remove the requirement of completing two years of appointment prior to withdrawing from the department in order to be eligible for reappointment.

These changes will not add any additional costs to small businesses.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N340 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Anthony Sommer
Chief Counsel
State Police Department

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #05-263

DIGEST

Amends 312 IAC 5-7-5, which establishes special watercraft speed zones on Ohio River embayments in Switzerland County, by making the entirety of Turtle Creek Bay an idle speed zone. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The proposed amendments will not impose requirements or costs on small businesses under IC 4-22-2.1-5.

312 IAC 5-7-5

SECTION 1. 312 IAC 5-7-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-7-5 Ohio River embayments and tributaries; Bryant Creek and Turtle Creek in Switzerland County; watercraft speed zones
Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8
Affected: IC 14

Sec. 5. A person must not operate a watercraft in excess of idle speed for the following embayments and tributaries of the Ohio River located in Switzerland County:

(1) On Bryant Creek within two hundred (200) feet of a boat launching ramp located in the northeast quarter of the northwest quarter of the northwest quarter of section 34, township 2 north, range 1 west as designated by buoys placed by the department.

(2) On Turtle Creek ~~for one thousand one hundred fifty (1,150) feet~~ **Bay** upstream from the confluence of the Ohio River and Turtle Creek.

(Natural Resources Commission; 312 IAC 5-7-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2375, eff Jan 1, 2002)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 4, 2006 at 6:00 p.m., at the Public Library, 205 Ferry Street, Vevay, Indiana the Natural Resources Commission will hold a public hearing on a proposed amendment to 312 IAC 5-7-5, which establishes special watercraft speed zones on Ohio River embayments in Switzerland County, by making the entirety of Turtle Creek Bay an idle speed zone.

The natural resources commission has the authority to adopt the proposed amendments under IC 14-10-2-4, IC 14-11-2-1, IC 14-15-7-3, and IC 14-29-1-8. The amendments would simplify the regulatory structure for the operation of watercraft in Turtle Creek Bay of the Ohio River, Switzerland County, 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 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #05-85

DIGEST

Adds 329 IAC 3.1-6-7 to conditionally exclude from regulation under 329 IAC 3.1 wastewater treatment sludge from the conversion coating of aluminum, hazardous waste code F019, generated by General Motors Corporation, Fort Wayne Assembly Plant, Fort Wayne, Indiana. Effective 30 days after filing with the Secretary of State.

HISTORY

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7 and Second Notice of Comment Period: June 1, 2005, Indiana Register (28 IR 2821).

Notice of First Hearing: October 1, 2005, Indiana Register (29 IR 51).

Date of First Hearing: October 18, 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 until the board has conducted a third comment period that is at least twenty-one (21) days long.

REQUEST FOR PUBLIC COMMENTS

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on June 1, 2005, at 28 IR 2821. The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

The proposed rule contains numerous changes from the draft rule that make the proposed rule so substantively different from the draft rule that public comment on the entire proposed rule is advisable. This notice requests the submission of comments on the entire proposed rule, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Mailed comments should be addressed to:

#05-85 [General Motors F019 Delisting]
Marjorie Samuel
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
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 (317) 232-3403, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 233-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked or hand delivered by December 22, 2005.

Additional information regarding this action may be obtained from Steve Mojonnier of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from June 1, 2005, through July 1, 2005, on IDEM's draft rule language. IDEM received comments from the following parties:

Lenora Strohm, Staff Environmental Engineer, Worldwide Facilities Group, General Motors Corporation (GM)

Terry Behrman, Manager, Environmental Affairs, Alliance of Automobile Manufacturers (AAM)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: In the "Background" - Delisting Process Section, IDEM definitively states, "No other state recognizes Indiana's delisting authority." However, GM believes that another authorized state may make a delisting decision based upon IDEM's evaluation of this petition. It is GM's opinion that EPA [U.S. Environmental Protection Agency] and other states may accept Indiana's delisting decision at their own discretion and that it is not necessary for IDEM to make such a declaration in this rule. Therefore, GM respectfully requests that IDEM remove this specific language prior to final publication of the rule. (GM)(AAM)

Response: While this comment is not directed to the published draft rule language itself, IDEM feels it would be helpful to respond to correct certain misunderstandings about the delisting process and Indiana's authority to delist a listed hazardous waste.

Indiana was authorized by EPA to delist a hazardous waste on January 4, 2001 (66 FR 733). Indiana is authorized to delist wastes generated in Indiana, in lieu of federal delisting, if the generator meets the requirements of 40 CFR 260.22. When a waste delisted under Indiana rules crosses state lines, it is subject to the hazardous waste program effective in that state. If that waste has not been delisted by that state or by EPA, it is a hazardous waste in that state.

Among the requirements for a state authorized for delisting is the responsibility to evaluate a petition on its merits. For IDEM to accept another state's delisting decision on its face, without evaluating a petition as suggested by the commentor, would violate 40 CFR 260.22 and 329 IAC 3.1-5-2 and would also violate RCRA section 3006 by operating a hazardous waste program that is not equivalent to the federal hazardous waste program.

The statement referred to by the commentor is a statement of

fact and is not part of the rule. The statement does not affect the actual rule language or the effectiveness of the delisting. While the statement is part of the record of this rulemaking, it will not appear in the final rule unless the rule language is amended to include the statement.

Comment: Quarterly Sampling - 329 IAC 3.1-6-7(2)(A) - The proposed delisting conditions require GM to collect and analyze two representative samples each quarter for the constituents listed in Table 2. This requirement is at least twice as onerous as those imposed by EPA and other states that have granted delisting petitions for this waste stream. GM requests that IDEM reduce this requirement to one sample per quarter for the first year, and then reduce this requirement to annual sampling and analysis following four quarters of successful sampling. As presented in the delisting petition, the process generating this waste stream is consistent, the waste is "hazardous" solely due to the use of aluminum, and the waste does not exhibit any characteristic of a hazardous waste. The additional sampling requirement adds to the cost of demonstrating compliance with the delisting conditions without providing additional environmental benefit. (GM)(AAM)

Response: The total amount of waste delisted under this rule would fill approximately 150 twenty-cubic yard roll-off containers. Quarterly sampling will sample four of these each year, or about 2.67% of the containers. Annual sampling would sample one of these containers each year, or about 0.67% of the containers. GM's petition covered a six week period of sampling. This sampling was conducted using duplicate samples and showed some variability in the waste. EPA has indicated that these delisted wastes at other automobile manufacturing facilities have shown significant variability over time. Quarterly testing is consistent with other similar delistings by EPA. IDEM does not believe that annual sampling is adequate to maintain reasonable oversight of this deregulated waste stream. Two samples per quarter will provide a reasonable level of assurance that variability in the waste will remain consistent over a longer period of time. However, IDEM has added a provision for GM to reduce sampling from two samples per quarter to one sample per quarter if the samples show a reasonable level of consistency over time.

Comment: Quality Assurance/Quality Control Requirements - 329 IAC 3.1-6-7(2)(A)(i) - IDEM states that "...tin must be extracted using SW-846 Method 1330A, Oily Waste Extraction Procedure" (OWEP). In the petition GM submitted to IDEM, and in previous delistings in other states, we have followed EPA's guidance (see EPA RCRA Delisting Program Guidance Manual for the Petitioner, March 23, 2000 at §6.1, Exhibit 2) which states that if the oil and grease (O&G) levels in the waste exceed 10,000 mg/kg then the petitioner would use the OWEP for metals. For consistency purposes we request that IDEM indicate that the OWEP is to be used if the total O&G levels exceed 1%. (GM)(AAM)

Response: IDEM has modified the draft rule to require use of Method 1330A if oil and grease levels exceed 10,000 mg/kg.

Comment: Quality Assurance/Quality Control Requirements - 329 IAC 3.1-6-7(2)(C) - This proposed delisting condition requires GM to "comply with Chapter 1, "Quality Control" of SW-846. Also, the "Proposed Conditions for Exclusion", item 3, states that the same level of analytical quality control used in the petition must be used in the quarterly verification analysis. The reference to Chapter 1 of SW-846 (Proposed 329 IAC 3.1-6-7(2)(C)), at its most rigid, would require GM to have a fully defined Sampling and Analysis plan for quarterly sampling. GM requests IDEM to modify this requirement as follows:

"GM will perform all of the sample management tasks associated with the quarterly monitoring in accordance with standard industry practices." (GM)(AAM)

Response: "Test Methods for Evaluating Solid Wastes, Physical/Chemical methods," U.S. Environmental Protection Agency Publication SW-846, Third Edition, as amended by Updates I, IIA, IIB, III, and IIA, commonly referred to as "SW-846," contains several levels of quality control standards that are required if the results of testing using SW-846 methods are to be accepted as valid, that is, having known accuracy and precision. Chapter 1, "Quality Control," contains general quality control requirements for all SW-846 methods when used for RCRA compliance purposes. In addition, each series of methods contains generalized quality control procedures for methods in that series. Finally, each SW-846 method contains method-specific quality control requirements that must be followed for the data resulting from use of that method to be considered valid. Chapter 2, "Choosing the Correct Procedure," provides additional guidance on the application of quality control procedures. The following quote from Chapter 2 is helpful in understanding these relationships:

"2.1.3 Quality Control Criteria Precedence

Chapter One contains general quality control (QC) guidance for analyses using SW-846 methods. QC guidance specific to a given analytical technique (e.g., extraction, cleanup, sample introduction, or analysis) may be found in Methods 3500, 3600, 5000, 7000, and 8000. Method specific QC criteria may be found in Sec. 8.0 of each individual method (or in Sec. 11.0 of air sampling methods). When inconsistencies exist between the information in these locations, method specific QC criteria take precedence over both technique-specific criteria and those criteria given in Chapter One, and technique-specific QC criteria take precedence over the criteria in Chapter One."

QA/QC procedures are a means of assuring that data is valid and should accepted by another party, such as IDEM. Failure to follow proper QA/QC procedures results in having data rejected. For consistency, GM should continue to use the sampling and analysis plan and QA/QC procedures that were used in preparing the petition, instead of preparing a new plan.

SW-846 is compiled from standard industry practices and methods and is the "standard industry practice" for RCRA analyses. The commentor's suggested language does not provide an ascertainable standard and cannot be adopted.

Comment: Compliance Demonstration with Table A and Table 1 Delisting Levels - 329 IAC 3.1-6-7(2)(D) - This

requirement states that GM "shall ensure that no constituent that is in Table 1 that is not subject to quarterly testing exceeds the delisting level for that constituent listed in Table 1." The proposal also states in the "Proposed Conditions for Exclusion", Item 1, "the delisted waste must not exceed any of the delisting concentrations for constituents of concern listed in Table A..." These requirements, stated differently but being the same, are discussed in two separate portions of the proposal and create a significant compliance demonstration problem for GM.

In addition, the requirement is further exacerbated by item (3) of the "Proposed Conditions for Exclusion", which begins by stating "GM must demonstrate on a quarterly basis that the constituents detected in the initial analysis are below the delisting levels in Table 1 of the draft rule". This section proceeds to detail how the sample will be taken, and then states that the sample extracts are to be analyzed for the constituents listed in Table 2. This section ends with the statement, "General Motors must also ensure that the remaining constituents listed in Table 1 of the draft rule, for which quarterly testing is not required, do not exceed the delisting levels". As proposed, this creates an unachievable compliance demonstration for Table 1 constituents that are not listed in Table 2.

IDEM intentionally developed the Table 2 list of constituents; it is a subset of Table A/Table 1 and is meant to reflect those constituents most likely to occur in a waste stream at detectable levels. This subset, Table 2, was developed based upon an extensive analysis of the information provided in the delisting petition. The specific purpose of developing this targeted, or reduced, list of constituents was to minimize unnecessary sampling and testing. The intent of addressing the Table A/Table 1 constituents is achieved through the testing of Table 2 constituents coupled with the other conditions addressing changes in operating conditions. Therefore, as proposed, the requirement to "ensure" that the Table A/Table 1 constituents are not exceeded is inconsistent with the intent of developing the list of Table 2 constituents to reduce testing. Further, it would be extremely difficult to demonstrate compliance with the requirement to "ensure" that the delisting levels for the entire Table A/Table 1 constituents are met without sampling and testing for each of those constituents.

The requirement to ensure that Table A/Table 1 delisting levels are not exceeded, yet only requiring testing for a subset of those constituents, creates a compliance issue. The process involved in preparing the delisting petition has demonstrated that the compounds included in Table A/Table 1 but not in Table 2 are not present in the sludge; GM assumes that they are not present unless a process change or other information indicates that these compounds may now appear in the sludge.

Therefore, for all of the reasons above, GM requests that any "demonstration" or "assurance" that the waste stream does not exceed the Table 1 or Table A delisting levels be removed from the proposal. (GM)(AAM)

Response: This comment addresses the background information as well as the draft rule language. The background information is provided to allow the public to see the petition review process and understand the basis for the requirements in the draft rule. This response will only deal with the portion of the comment that deals with the draft rule language.

40 CFR 260.22 requires states which are authorized to delist hazardous waste in lieu of EPA to consider all of the factors listed in 40 CFR 260.22. This requires IDEM to consider hazardous constituents in addition to the constituents for which the waste was originally listed. This requirement complies with section 3001(f) of RCRA and was added in response to Congressional concerns about EPA's early delisting activities. [See the discussion at "F. Delisting Procedures," 50 FR 28727, July 15, 1985.] Where the waste is a mixture of a solid waste and a listed hazardous waste, the analysis must consider the waste stream as a whole, including factors that could cause the waste mixture to be a hazardous waste. As a result, the proposed list of constituents in proposed 329 IAC 3.1-6-7(1), Table 1 is large.

Table 1 lists the constituents that both IDEM and GM reasonably believe could be found in this waste stream. In its delisting petition, GM has assured the department that the constituents listed in Table 1 that are not also listed in Table 2 do not occur in this waste stream. IDEM has analyzed the petition and agrees with GM's assertion. In addition, GM maintains internal processes that allow it to be aware of every chemical constituent introduced into plant processes and potentially into the wastewater treatment sludge. The general requirement proposed in 329 IAC 3.1-6-7(1) that no constituent exceed its delisting level is intended to create a duty for GM to pay attention to the levels of all hazardous constituents they introduce into the waste stream using existing information.

To reduce testing requirements, we have only proposed to require quarterly testing for constituents that were actually found in the waste during the analysis used to develop the petition. These constituents are listed in Table 2

The requirement to act on this information is contained in proposed 329 IAC 3.1-6-7(3), which requires GM to notify IDEM if at any time they become aware that constituents listed in Table 1 are higher than the delisting levels.

GM has already demonstrated that the constituents listed in Table 1 but not included in Table 2 were not detected during the analysis for the petition and has expressed confidence in that information. As an environmentally responsible entity, GM may use its discretion as to how and when to track the levels of these constituents during the life of the delisting. GM has made a demonstration that all constituents are below delisting levels, and this requirement is only intended to ensure that GM continues to use its initiative to maintain these levels in this waste stream as demonstrated, without additional regulatory requirements.

Because the proposed rule does not contain a requirement for "demonstration" or "assurance" for constituents in Table 1 that are not also listed in Table 2, this comment cannot be adopted.

Comment: Delisting Levels Below Detection Levels - Delisting levels that are below the detection limit of current methods have been included in Table 1 for hexachlorobenzene

and pentachlorophenol. (GM)(AAM)

Response: GM is not required to conduct quarterly testing for these substances, so the issue of detection limits for these substances will rarely if ever arise. SW-846 and IDEM guidance contain adequate guidance to select an analytical method with detection limits that are lower than the proposed delisting levels.

Comment: Process and Chemical Changes - 329 IAC 3.1-6-7(4)(A) - This proposed rule requires that GM notify the department in writing if there is a change in the aluminum coating process or in the chemicals used in the aluminum coating process other than those described in the petition for delisting. GM must also notify the department if there are other changes in the facility that could cause hazardous constituents listed in 40 CFR 261, Appendix VIII that are not listed in Table 2 to be introduced into the plant's wastewater treatment system. GM requests that these requirements be modified to appropriately identify changes in operations that would result in a significant change to the waste stream.

The aluminum coating process is designed to consistently operate as described in the delisting petition, however, insignificant day-to-day operational changes may occur. Examples might be (1) slight modifications to the treatment chemicals used due to wastewater volume fluctuations, or (2) modifications to the process chemicals due to changes in suppliers. These types of changes would not cause a significant change in the waste stream. GM believes that it is appropriate to regulate the resulting waste stream rather than the manufacturing process itself.

Further, it would be infeasible, if not impossible, to monitor every chemical used in the assembly plant on an ongoing basis for constituents that may simply be "introduced" into the wastewater treatment system in any concentration at any given moment that do not affect the waste stream in any significant way. GM believes that this requirement is overly onerous, inappropriate relative to the non-hazardous characteristics of this waste stream, and makes compliance with this provision impossible. Besides, the language in 329 IAC 3.1-6-7(4)(A)(ii) requires GM to demonstrate that no new hazardous constituents listed in 40 CFR 261, Appendix VIII have been introduced *after* it had been determined that a significant change has occurred.

Therefore, GM requests IDEM to replace the language in 329 IAC 3.1-6-7(4)(A)(i) and (ii) with the following:

"329 IAC 3.1-6-7(4)(A) Changes in Operating Conditions: The facility must notify IDEM in writing if the manufacturing process or the chemicals used in the manufacturing process significantly change and cause the delisting levels in Table 2 to be exceeded."

It is GM's opinion that this revision will not alleviate GM's obligation to monitor its operations for significant changes that may cause the waste to exceed the delisting criteria. Further, nothing in the delisting affects GM's ongoing obligation to ensure that the wastewater treatment sludge is not hazardous under other RCRA provisions. (GM)(AAM)

Response: Indiana law and administrative rules drafting standards prohibit use of such terms as "significant" and require use of ascertainable standards. While EPA F019 delisting rules routinely use the term "significant," Indiana rules must provide real, definable thresholds and ascertainable standards. The referenced requirement was carefully written to provide a specific, ascertainable threshold for a change that would trigger a requirement for GM to notify IDEM.

A change that causes a constituent to exceed a delisting level is a significant change, and we have modified 329 IAC 3.1-6-7(3) of the draft rule to use that threshold.

Comment: Potential Errors in the Proposal - GM has reviewed the analytical information published as part of this proposal and identified several values to be different from the data reported in the delisting petition. It may be that some of the delisting values are different as a result of revisions to the DRAS [Delisting Risk Assessment Software] model, however, we present these potential errors for your consideration. [table deleted]

In addition, tetrachloroethene is listed in Table 1 but not in Table A. For consistency, GM suggests that Table A be revised to incorporate the data for tetrachloroethene or that it be removed from Table 1. (GM)(AAM)

Response: IDEM agrees and has incorporated this information in the draft rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST PUBLIC HEARING

On October 18, 2005, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of new rules at 329 IAC 3.1-6-7. No comments were made at the first public hearing.

FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY

IDEM has estimated that the economic impact of this rule will be less than five hundred thousand dollars ($500,000) on the regulated entities. The proposed rule was not submitted to the Legislative Services Agency for analysis under IC 4-22-2-28.

329 IAC 3.1-6-7

SECTION 1. 329 IAC 3.1-6-7 IS ADDED TO READ AS FOLLOWS:

329 IAC 3.1-6-7 Waste excluded from regulation; General Motors Corporation, Fort Wayne Assembly Plant, Fort Wayne, Indiana

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-22-2
Affected: IC 13-22

Sec. 7. Wastewater treatment sludge, hazardous waste code F019, that is generated by General Motors Corporation (General Motors) at the Fort Wayne Assembly Plant, Fort Wayne, Indiana is excluded from regulation under this article so long as management of the waste complies with all of the following conditions:

(1) No concentration of a constituent listed in Table 1 may exceed the delisting level for that constituent listed in Table 1. The delisting levels listed in Table 1 are the maximum concentration of that constituent measured in the extract of the wastewater treatment sludge using the extraction methods described in subdivision (2).

Table 1. Maximum Delisting Levels for Inorganic and Organic Constituents

Constituent	Chemical Abstract Service Registry Number	Delisting Level (mg/L)[1]
Inorganic Constituents:		
Antimony	7440–36–0	0.5
Arsenic	7440–38–2	0.225
Barium	7440–39–3	100
Beryllium	7440–41–7	1.0
Cadmium	7440–43–9	0.36
Chromium	7440–47–3	3.71
Cobalt	7440–48–4	18.0
Cyanide	57–12–5	8.63
Lead	7439–92–1	5.0[2]
Mercury	7439–97–6	0.116
Nickel	7440–02–0	67.8
Selenium	7782–49–2	1.0[2]
Silver	7440–22–4	5.0[2]
Thallium	7440–28–0	0.211
Tin	7440–31–5	540
Vanadium	7440–62–2	65.0
Zinc	7440–66–6	673
Volatile Organic Compounds:		
Acetone	67–64–1	1500
Acetonitrile	75–05–8	77.5
Acrylonitrile	107–13–1	0.006
Allyl chloride	107–05–1	0.120
Benzene	71–43–2	0.057
n–Butanol	71–36–3	171
Carbon tetrachloride	56–23–5	0.034
Chlorobenzene	108–90–7	2.70
Chloroform	67–66–3	0.035
Chloromethane	74–87–3	9.700
1,1–dichloroethane	75–34–3	61.35
1,2–dichloroethane	107–06–2	0.035
1,1–dichloroethene	75–35–4	0.300
cis–1,2–dichloroethene	156–59–2	3.19
trans–1,2–dichloroethene	156–60–5	4.56
Ethyl benzene	100–41–4	31.9
Formaldehyde	50–00–0	43.5
Methylene chloride	75–09–2	0.216
Methyl ethyl ketone	78–93–3	200[2]
Methyl isobutyl ketone	108–10–1	1000
Methyl methacrylate	80–62–6	460
Styrene	100–42–5	4.56
1,1,1,2–Tetrachloroethane	630–20–6	0.182
1,1,2,2–Tetrachloroethane	79–34–5	0.330
Tetrachloroethene	127–18–4	0.228
Toluene	108–88–3	45.6
1,1,1–trichloroethane	71–55–6	9.11
1,1,2–trichloroethane	79–00–5	0.058
Trichloroethene	79–01–6	0.228
Vinyl acetate	108–05–4	32
Vinyl chloride	75–01–4	0.002
Xylenes	1330–20–7	13.93
Semivolatile Organic Compounds:		
bis–(2ethylhexyl) phthalate	117–81–7	0.146
Butyl benzyl phthalate	85–68–7	69.6
m–Cresol	108–39–4	85.5
o–Cresol	95–48–7	85.5
p–Cresol (4–methylphenol)	106–44–5	8.55
1,4–dichlorobenzene	106–46–7	3.24
2,4–dimethylphenol	105–67–9	34.2
2,4–dinitrotoluene	121–14–2	0.005
Dioctyl phthalate	117–84–0	0.168
Hexachlorobenzene	118–74–1	1.6×10^{-4}
Hexachlorobutadiene	87–68–3	0.016
Hexachloroethane	67–72–1	0.225
Naphthalene	91–20–3	0.546
Nitrobenzene	98–95–3	0.855
Pentachlorophenol	87–86–5	0.007
Pyridine	110–86–1	1.71
2,4,5–trichlorophenol	95–95–4	68.6
2,4,6–trichlorophenol	88–06–2	0.290

[1]mg/L means milligrams per liter.

[2]The delisting level for this constituent was higher than the toxicity characteristic regulatory level in 40 CFR 261.24, therefore the toxicity characteristic regulatory level applies.

(2) Except as provided in clauses (E) and (F), General Motors shall obtain two (2) duplicate representative samples of the delisted waste each quarter and analyze them for the constituents listed in Table 2 as follows:

(A) Constituents must be extracted using Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", U.S. Environmental Protection Agency Publication SW-846, Third Edition, as amended by Updates I, IIA, IIB, III, and IIIA* (SW-846).

*U.S. Environmental Protection Agency Publication SW-846 is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238.

(B) Metals must be extracted using Method 1330A, Oily Waste Extraction Procedure, if oil and grease levels exceed ten thousand (10,000) milligrams per kilogram.
(C) Constituents must be analyzed in accordance with the SW-846 methods listed for each in Table 2.
(D) The detection level for each method used to analyze the constituents in Table 2 must be less than the delisting level described in Table 1.
(E) If the relative percent difference (RPD) between the two (2) samples is forty percent (40%) or less for the first four (4) quarters, then General Motors may obtain and analyze one (1) representative sample of the delisted waste each following quarter. The RPD is calculated for each constituent and equals one hundred (100) times the absolute value of the difference between the results divided by the average of the results, as follows:

$$RPD = 100 [(|x_1 - x_2|) / \{(x_1 + x_2) / 2\}]$$

where x_1 equals sample results and x_2 equals duplicate results.
(F) If any sample result shows any constituent listed in Table 2 at or above fifty percent (50%) of the delisting level for that constituent, then General Motors must analyze two (2) duplicate samples each quarter until authorized by the department to analyze one (1) sample each quarter.
(G) Nothing in this section prohibits General Motors from requesting at any time that the solid waste management board modify this section to allow less frequent verification testing.

Table 2. Constituents for which Quarterly Testing is Required

Constituent	SW-846 Method	Constituent	SW-846 Method
Acetone	8260B	Formaldehyde	8315A
Barium	6010B or 6020	Lead	6010B or 6020
bis-(2ethylhexyl) phthalate	8270C	Nickel	6010B or 6020
n-Butanol	8260B	Selenium	6020
Chromium	6010B or 6020	Tin	6010B or 6020
Cobalt	6010B or 6020	Toluene	8260B
p-Cresol (4-methylphenol)	8270C	Zinc	6010B or 6020

(3) If waste testing or other information available to General Motors shows that any constituent in Table 1 has exceeded the delisting level for that constituent, or General Motors makes changes in the Fort Wayne Assembly Plant that cause hazardous constituents listed in Table 1 to exceed the delisting level for that constituent, General Motors must do all of the following:
(A) Notify the department in writing within ten (10) days of first possessing or being made aware of such data.
(B) Demonstrate that the waste continues to meet all delisting levels in Table 1.
(C) Manage the waste as hazardous waste until General Motors receives written approval from the commissioner to resume managing the waste under this exclusion.
(4) General Motors must submit an annual report that summarizes the data obtained through quarterly verification testing required by subdivision (2) to the department by February 1 of the following year. The report must include the results of each required analysis for the previous calendar year.
(5) General Motors must compile, summarize, and maintain records of operating conditions and analytical data. The records must be:
(A) maintained for a minimum of five (5) years; and
(B) made available for inspection by the department during normal working hours.
(6) All data required by this section must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).
(7) The delisted waste must be disposed of in a:
(A) municipal solid waste landfill permitted under 329 IAC 10; or
(B) hazardous waste disposal facility permitted under this article.
(8) If, at any time after disposal of the delisted waste, General Motors possesses or is otherwise made aware of any data, including, but not limited to, leachate data or ground water monitoring data, or any other data relevant to the delisted waste indicating that any constituent identified in:
(A) Table 1 is at a level in the leachate that is higher than the specified delisting level; or
(B) Table 3 is in the ground water at a concentration that is higher than the maximum allowable ground water concentration in Table 3;
then General Motors must report such data in writing to the department within ten (10) days of first possessing or being made aware of that data.

Table 3. Maximum Allowable Ground Water Concentrations (mg/L)[1]

Acetone	**3.75**	**Formaldehyde**	**1.38**
Barium	**2.0**	**Lead**	**0.015**
bis-(2ethylhexyl) phthalate	**0.0015**	**Nickel**	**0.75**
n-Butanol	**3.75**	**Selenium**	**0.75**
Chromium	**0.1**	**Tin**	**22.5**
Cobalt	**2.2**	**Toluene**	**1.0**
p-Cresol (4-methylphenol)	**0.19**	**Zinc**	**11.2**

[1]mg/L means milligrams per liter.

(9) No more than three thousand (3,000) cubic yards of delisted waste may be disposed of in any calendar year under this exclusion.

(Solid Waste Management Board; 329 IAC 3.1-6-7)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on January 17, 2006 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Solid Waste Management Board will hold a public hearing on proposed new rules and amendments to rules at 329 IAC 3.1.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules and amendments to rules. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana) and ask for extension 3-1655.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-0855 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
Deputy Assistant Commissioner
Office of Land Quality

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #05-121

DIGEST

Adds 345 IAC 1-7 to prescribe procedures for condemnation, indemnity, and disposition of animals and objects, euthanasia of animals and destruction of objects, and cleaning and disinfecting to prevent, detect, control, and eradicate diseases and pests of animals. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to This Rule:

The rule will affect persons that own animals or objects that are implicated in an animal disease outbreak. The number of businesses affected will vary greatly, ranging from zero in many years to hundreds or thousands in the event of a widespread disease outbreak. The number affected is directly dependent on unpredictable disease outbreaks and further on the nature of a particular disease at issue.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Imposed on Small Businesses:

The proposed changes do not impose any new annual reporting, record keeping, or other administrative costs.

Estimated Total Annual Economic Impact on Small Businesses:

In the event of an animal disease outbreak, small businesses will be impacted by any order from the Board of Animal Health (BOAH) to condemn animals or objects as authorized by state statute. The proposed rules are procedural rules implementing the condemnation and indemnity statutes. In most years, the annual economic impact on small businesses from condemnation and indemnity will be negligible. In the relatively rare event of a widespread outbreak of a significant animal disease, the economic impact on small businesses may be significant depending on the nature of the disease and its spread.

Justification for Costs:

State statute requires BOAH to pay indemnity in accordance with rules adopted by the Board. IC 15-2.1-18-14.

Regulatory Flexibility Analysis:

The proposed rule incorporates the alternative methods the

agency determined to be less costly or less intrusive to small businesses while still meeting statutory requirements.

Supporting Data, Studies, or Analyses:

The Board did not rely on any studies in reaching the conclusions in this economic impact statement.

345 IAC 1-7

SECTION 1. 345 IAC 1-7 IS ADDED TO READ AS FOLLOWS:

Rule 7. Acquisition and Disposition of Animals and Objects

345 IAC 1-7-1 Definitions; applicability
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3

Sec. 1. The definitions in IC 15-2.1-2 and this rule apply throughout this rule. *(Indiana State Board of Animal Health; 345 IAC 1-7-1)*

345 IAC 1-7-2 "Board" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3

Sec. 2. "Board" means the Indiana state board of animal health appointed under IC 15-2.1-3. *(Indiana State Board of Animal Health; 345 IAC 1-7-2)*

345 IAC 1-7-3 "Object" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3; IC 15-2.1-18

Sec. 3. "Object" means the following:
(1) Any pest or disease.
(2) A material or tangible thing that could harbor a pest or disease.
(Indiana State Board of Animal Health; 345 IAC 1-7-3)

345 IAC 1-7-4 "Payment limit" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3; IC 15-2.1-18

Sec. 4. "Payment limit" means a limit prescribed by law on the amount of money a person may receive for indemnity for destruction of an animal or object. *(Indiana State Board of Animal Health; 345 IAC 1-7-4)*

345 IAC 1-7-5 "Pest" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3

Sec. 5. "Pest" means any of the following that can directly or indirectly injure, cause damage to, or cause disease in animals:
(1) A protozoan.
(2) A plant.
(3) A bacteria.
(4) A fungus.
(5) A virus or viroid.
(6) An infectious agent or other pathogen.
(7) An arthropod.
(8) A parasite.
(9) A prion.
(10) A vector.
(11) Any organism similar to or allied with any of the organisms described in this section.
(Indiana State Board of Animal Health; 345 IAC 1-7-5)

345 IAC 1-7-6 "State veterinarian" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-4

Sec. 6. "State veterinarian" means the following:
(1) The state veterinarian appointed under IC 15-2.1-4.
(2) The state veterinarian's authorized representatives.
(Indiana State Board of Animal Health; 345 IAC 1-7-6)

345 IAC 1-7-7 Condemnation
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3; IC 15-2.1-18

Sec. 7. The state veterinarian may order any animal or object condemned in order to do the following:
(1) Protect the citizens and animals of the state from diseases and pests.
(2) Maintain or improve the state's disease status as recognized by any of the following:
(A) Another state.
(B) The United States Department of Agriculture or other federal agency or entity.
(C) A foreign country.
(D) The Office International des Epizooties (OIE) or other international standard-setting bodies.
(Indiana State Board of Animal Health; 345 IAC 1-7-7)

345 IAC 1-7-8 Indemnity
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-18-15; IC 15-2.1-18-16; IC 15-2.1-19

Sec. 8. (a) Except as provided in IC 15-2.1-18-15 and subject to any other limits imposed by law, the board will indemnify owners of animals or objects condemned by the board according to this section. The following apply:
(1) If another provision of IC 15-2.1 or this title provides a specific procedure for indemnification for certain animals or objects, the more specific provisions shall control.
(2) If indemnity is paid by the federal government, the indemnity procedures prescribed by the federal government may be used instead of the procedures in this rule.

(b) The state veterinarian shall determine an appraised value for all condemned animals and objects. For purposes of IC 15-2.1-18-16 and this rule, "satisfactory appraisal"

means a value determined by the state veterinarian to be a fair estimate of the condemned animal's or object's fair market value. The state veterinarian may consider the following when determining appraised value:

(1) The owner's purchase price for the condemned animal or object.

(2) The sales price of similar animals or objects sold on the open market.

(3) The animal's market value as the following:

(A) A food animal.

(B) A breeding animal.

(4) The salvage value of the animal or object.

(5) The value according to the following:

(A) Published catalogues.

(B) Market reports.

(C) Other formal and informal market surveys.

(6) Any other relevant information.

The state veterinarian may survey, hire, or consult with and may rely on the opinion of independent appraisers, experts, and other knowledgeable persons when determining the value of animals and objects.

(c) The state veterinarian must notify the owner of the state veterinarian's determination of appraised value. The procedures in IC 15-2.1-19 shall control the following:

(1) The notification process.

(2) The owner's opportunity to appeal the state veterinarian's determination.

(d) The board will pay an owner of condemned animals and objects the lesser of the following amounts:

(1) The appraised value determined under this rule minus any amounts received by the owner for the condemned animal or object from the following:

(A) Insurance proceeds.

(B) Indemnity from the federal government.

(C) Any other source.

(2) The applicable payment limit, if any.

The state veterinarian shall keep a record of indemnity paid.

(e) The owner of condemned animals or objects must report to the board any money received for the condemned animal or object from any source other than the state immediately upon receipt of the money. *(Indiana State Board of Animal Health; 345 IAC 1-7-8)*

345 IAC 1-7-9 Acquisition of animals and objects by voluntary sale

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-18-16.5

Sec. 9. The state veterinarian may do the following:

(1) Purchase any animal or object for the purpose of:

(A) preventing;

(B) detecting;

(C) controlling; and

(D) eradicating;

diseases and pests of animals.

(2) Negotiate and pay a fair value for any animal or object purchased.

The state veterinarian shall keep a record of all animals and objects purchased. *(Indiana State Board of Animal Health; 345 IAC 1-7-9)*

345 IAC 1-7-10 Euthanasia and disposal

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-16; IC 15-2.1-18

Sec. 10. (a) When the board or its agents condemn an animal, the state veterinarian may prescribe the means by which the animal shall be euthanized. If the state veterinarian prescribes a method of euthanasia, the method shall be one that is reasonably humane while allowing for efficient accomplishment of disease control objectives under the prevailing circumstances.

(b) When the board or its agent condemns an object, the state veterinarian may prescribe the means by which the object is destroyed. If the state veterinarian prescribes a method of destruction, the method shall be one that allows for efficient accomplishment of disease control objectives under the prevailing circumstances.

(c) The state veterinarian may order any animal or object disposed of in a particular manner in order to prevent, detect, control, eradicate, or otherwise protect the citizens and animals of the state from diseases and pests of animals. In an order issued under this section, the state veterinarian may:

(1) restrict the use of disposal methods prescribed in IC 15-2.1-16 and 345 IAC 7-7; or

(2) prescribe new or alternative methods of disposal.

(d) Subject to state laws governing procurement, the state veterinarian may contract with:

(1) private veterinarians;

(2) renderers; and

(3) any other qualified person;

for euthanasia, destruction, and disposal services. *(Indiana State Board of Animal Health; 345 IAC 1-7-10)*

345 IAC 1-7-11 Cleaning and disinfecting

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-15-7; IC 15-2.1-16-18

Sec. 11. The state veterinarian may do the following:

(1) Order the cleaning and disinfecting of any:

(A) premises;

(B) building; or

(C) other:

(i) structure;

(ii) conveyance;

(iii) equipment; or

(iv) object;

using procedures approved by the state veterinarian in order to prevent, detect, control, and eradicate diseases and pests of animals.

(2) Subject to state laws governing procurement, contract with qualified persons for cleaning and disinfecting services.

(Indiana State Board of Animal Health; 345 IAC 1-7-11)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 19, 2006 at 9:45 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, Indiana the Indiana State Board of Animal Health will hold a public hearing on a proposed new rule to prescribe procedures for condemnation, indemnity, and disposition of animals and objects, euthanasia of animals and destruction of objects, and cleaning and disinfecting to prevent, detect, control, and eradicate diseases and pests of animals.

The proposed changes are a result of requirements imposed by state statute, IC 15-2.1-18-14. The Board did not rely on any data, studies, or analyses in reaching this conclusion.

Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bret D. Marsh, D.V.M.
Indiana State Veterinarian
Indiana State Board of Animal Health

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #05-177

DIGEST

Amends 345 IAC 2.5-3-2 to reduce from six months to 60 days the period following a whole herd test for tuberculosis during which animals may be moved into the state from modified accredited or accreditation preparatory states or zones without an individual tuberculin test. Makes other technical changes in the law of tuberculosis control. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Description of Affected Industry:

The rule will affect persons moving cattle into the state from states or zones with a United States Department of Agriculture designation of modified accredited or accreditation preparatory tuberculosis status.

Reporting, Record Keeping, and Other Administrative Costs:

The proposed changes do not impose any new reporting, record keeping, or other administrative costs.

Estimated Total Annual Economic Impact on Small Businesses:

Currently ten (10) counties in Northeast Michigan are the only area in the United States designated as a modified accredited or accreditation preparatory zone. The change in requirements will apply only to cattle herds in the modified accredited counties in Michigan that have conducted a whole herd test and then choose to move animals into Indiana. The change will impose an additional tuberculosis test on cattle from these Michigan counties if the movement occurs more than sixty (60) days from the date of the whole herd test.

The number of cattle moving from the ten (10) counties in the Michigan modified accredited zone into Indiana may change over time. As of the date this document is prepared, the Board of Animal Health (BOAH) records indicate that no shipments from the Michigan modified accredited counties occurred in 2005.

The agency estimates the economic impact on small businesses to be negligible.

Justification for Costs:

The proposed rule changes are in response to a change in federal interstate movement regulations. 70 FR 29579. The change is necessary to avoid a conflict between BOAH rules and USDA regulations.

Supporting Data, Studies, or Analyses:

The Board did not rely on any studies in reaching this estimate.

Regulatory Flexibility Analysis:

The requirements in the proposed rule changes are necessary to avoid a conflict with federal regulations. Rules that are less strict than the federal standard are in conflict with the federal standard. Therefore, alternative methods were not selected.

345 IAC 2.5-3-2

SECTION 1. 345 IAC 2.5-3-2, AS ADDED AT 28 IR 2679, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

345 IAC 2.5-3-2 Moving cattle and bison into the state

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13

Sec. 2. (a) A person may move cattle and bison into the state only if the requirements of this rule and 345 IAC 1-3 are met. The following apply to all cattle and bison entering the state:

(1) Before cattle or bison are moved into the state, the owner must obtain a permit from the board under 345 IAC 1-3-4. Permits may be obtained by calling the board at (317) 227-0316.

(2) Cattle and bison entering the state must be accompanied by a certificate as required in 345 IAC 1-3-4. Certificates accompanying cattle and bison must indicate the following:

(A) The name and address of the **following:**

(i) The owner of the herd of origin.

~~(B) The name and address of~~ **(ii)** The destination.

~~(C)~~ **(B)** The permit number issued by the state veterinarian.

~~(D)~~ **(C)** A description of the animals.

~~(E)~~ **(D)** The official identification of each animal.

~~(F)~~ **(E)** The date ~~conducted~~ **or dates** and results of any tests for diseases, including tuberculosis, conducted on the animals.

~~(G)~~ **(F)** The herd status, if any, of the herd of origin including the date or dates of any herd tests.

~~(H)~~ **(G)** Any other health information:

(i) relevant to the shipment of the animals; or

(ii) otherwise required by law.

(3) Cattle and bison must be individually identified ~~prior to~~ **before** movement into the state as specified in 345 IAC 1-3-3.

(b) Reactor cattle and bison may not be moved into the state unless they are moved directly to an approved slaughtering establishment in a manner that meets the requirements for reactors in 9 CFR 77.17. Exposed cattle and bison may not be moved into the state unless they are moved directly to an approved slaughtering establishment in a manner that meets the requirements for exposed animals in 9 CFR 77.17. Suspect cattle and bison may not be moved into the state unless they are moved directly to an approved slaughtering establishment in a manner that meets the requirements for suspect cattle and bison in 9 CFR 77.17.

(c) A person may move into the state sexually intact female cattle of dairy breeds, including dairy cross breeds, that are six (6) months of age or older that originate from an accredited-free state or zone or a modified accredited advanced state or zone only under one (1) of the following conditions:

(1) The animals are moved:

(A) directly to an approved slaughtering establishment for slaughter; or ~~are moved~~

(B) through one (1) approved livestock facility;

and then ~~direct~~ **directly** to slaughter.

(2) The animals originate from an accredited herd ~~and the accredited herd~~ **that** has completed the tuberculosis testing necessary for accredited status with negative results within one (1) year ~~prior to~~ **before** the date of movement into the state.

(3) If the animals are moved:

(A) into the state to an exhibition; and ~~are moved~~

(B) back out of the state within ten (10) days of arrival;

the requirements in subsections (d) through (h) apply.

(4) The animals are moved in accordance with a commuter herd agreement under subsection (i).

(5) Each animal, without regard to its age, has tested negative for tuberculosis on an official test conducted within the sixty (60) days immediately ~~prior to~~ **before** the ~~animal~~ **animal's** entering the state. ~~But,~~ Animals to be moved need not be retested if they were tested negative for tuberculosis as a part of a herd tuberculosis test at their herd of origin within the six (6) months ~~prior to~~ **before** the movement into the state.

(d) A person may move into the state cattle and bison other than animals described in subsection (c) that originate from accredited-free states or zones.

(e) A person may move into the state cattle and bison other than animals described in subsection (c) that originate from modified accredited advanced states or zones if the animals are not infected with and have not been exposed to tuberculosis and one (1) of the following conditions is met:

(1) The animals are moved:

(A) directly to an approved slaughtering establishment for slaughter; or ~~are moved~~

(B) through one (1) approved livestock facility;

and then ~~direct~~ **directly** to slaughter only.

(2) The cattle or bison are **as follows:**

(A) Steers or spayed heifers. ~~and are~~

(B) Officially identified or officially identified by premises of origin identification.

(3) The cattle or bison originate from an accredited herd ~~and the accredited herd~~ **that** has completed the tuberculosis testing necessary for accredited status with negative results within two (2) years ~~prior to~~ **before** the date of movement into the state.

(4) The cattle and bison are sexually intact animals that are not from an accredited herd, and each animal has tested negative for tuberculosis on an official test conducted within the sixty (60) days immediately ~~prior to~~ **before** the ~~animal~~ **animal's** entering the state. ~~But,~~ Animals to be moved need not be retested if they were tested negative for tuberculosis as a part of a herd tuberculosis test at their herd of origin within the six (6) months ~~prior to~~ **before** the movement into the state.

(f) A person may move into the state cattle and bison that originate from modified accredited states or zones if the animals are not infected with and have not been exposed to tuberculosis and one (1) of the following conditions is met:

(1) The animals are moved:

(A) directly to an approved slaughtering establishment for slaughter; or ~~are moved~~

(B) through one (1) approved livestock facility;

and then ~~direct~~ **directly** to slaughter only.

(2) The cattle or bison are **as follows:**

(A) Steers or spayed heifers. ~~that are~~

(B) Officially identified or identified by official premises of origin identification. ~~and each animal has~~

(C) Tested negative for tuberculosis on an official test within the sixty (60) days immediately ~~prior to~~ **before** the ~~animal~~ **animal's** entering the state.

(3) The cattle and bison originate from an accredited herd ~~and the accredited herd~~ **that** has completed the tuberculosis testing necessary for accredited status with negative results within one (1) year ~~prior to~~ **before** the date of movement into the state.

(4) The cattle and bison are sexually intact animals that are not from an accredited herd and meet each of the following requirements:

(A) The animal originated from a herd that tested negative for tuberculosis to a herd test of animals twelve (12) months of age and older conducted within one (1) year ~~prior to~~ **before** the date of movement into the state.

(B) Each animal that is two (2) months of age or older has tested negative for tuberculosis on an official test conducted within the sixty (60) days immediately ~~prior to~~ **before** the ~~animal~~ **animal's** entering the state. ~~But,~~ Animals to be moved need not be retested if they were tested negative for tuberculosis as a part of a herd tuberculosis test at their herd of origin within the ~~six (6) months prior to~~ **sixty (60) days before** the movement into the state.

(g) A person may move into the state cattle and bison that originate from accreditation preparatory states or zones if the animals are not infected with and have not been exposed to tuberculosis and one (1) of the following conditions is met:

(1) The animals are moved:

(A) directly to an approved slaughter establishment for slaughter; or ~~are moved~~

(B) through one (1) approved livestock facility;

and then ~~direct~~ **directly** to slaughter only.

(2) The cattle or bison are **as follows:**

(A) Steers or spayed heifers. ~~that are~~

(B) Officially identified or identified by official premises of origin identification. ~~that~~

(C) Originate from a herd that tested negative for tuberculosis to a herd test conducted within one (1) year ~~prior to~~ **before** the date of movement into the state. ~~and each animal has~~

(D) Tested negative for tuberculosis on an official test within the sixty (60) days immediately ~~prior to~~ **before** the ~~animal~~ **animal's** entering the state. ~~But,~~

Animals to be moved need not be retested if they were tested negative for tuberculosis as a part of a herd tuberculosis test at their herd of origin within the six (6) months ~~prior to~~ **before** the movement into the state.

(3) The cattle and bison:

(A) originate from an accredited herd ~~the accredited herd~~ **that** has completed the tuberculosis testing necessary for accredited status within one (1) year ~~prior to~~ **before** the date of movement; and ~~each animal in the shipment has~~

(B) have tested negative for tuberculosis on an official test within the sixty (60) days immediately ~~prior to~~ **before** the ~~animal~~ **animal's** entering the state.

(4) The cattle and bison are sexually intact animals that are not from an accredited herd and meet each of the following requirements:

(A) The herd from which the animals originated tested negative for tuberculosis to a herd test conducted within one (1) year ~~prior to~~ **before** the date of movement into the state.

(B) Each animal has tested negative for tuberculosis twice on official tests conducted between sixty (60) and one hundred eighty (180) days apart, with the second test conducted not more than sixty (60) days immediately ~~prior to~~ **before** the ~~animal~~ **animal's** entering the state. ~~But,~~ The second test is not required if the animals are moved interstate within ~~six (6) months~~ **sixty (60) days** following the herd of origin test. ~~and one (1) additional negative test of the animal is conducted after the herd test and within sixty (60) days of the movement.~~

(h) A person may move into the state cattle and bison that originate from a nonaccredited state or zone if the animals are **as follows:**

(1) Not infected with and have not been exposed to tuberculosis.

(2) Moved directly to an approved slaughter establishment for slaughter. ~~and~~

(3) Accompanied by a permit. ~~and~~

(4) Moved in a conveyance that has been sealed with an official seal.

(i) Cattle or bison that are members of a recognized and approved commuter herd may be moved interstate in accordance with the applicable commuter herd agreement. Animals must move directly from without commingling with animals from outside the production system under the terms of an approved herd commuter agreement. The state veterinarian may accept applications for commuter herd recognition and issue approvals for commuter herd movements under an approved commuter herd agreement as follows:

(1) Movements must be **as follows:**

(A) Without change of ownership.

~~(2) Movements must be~~ **(B)** A part of and within the normal operations of a production system.

~~(3)~~ **(2)** The commuter herd agreement must address and may waive or alter **the following:**

(A) The requirements in 345 IAC 1-3 for **the following:**

(i) Permits to enter the state.

(ii) Animal identification. ~~and~~

(iii) Certificates of veterinary inspection. ~~and~~

(B) The requirements in this article for tuberculosis testing.

~~(4)~~ **(3)** The owner must **do the following:**

(A) Keep records of all movements for at least five (5) years.

(B) Present the records to state or federal officials for inspection upon request. ~~and~~

(C) Submit reports as required by the commuter herd agreement.

Commuter herd agreements shall be for a period of one (1) year and must be reviewed and renewed annually to remain in effect.

(j) The state veterinarian may permit the movement of any animal, including reactor, exposed, or quarantined cattle and bison, into the state:

(1) for the purpose of research or disposal; or

(2) to further the purposes of this article.

(Indiana State Board of Animal Health; 345 IAC 2.5-3-2; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2679)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 19, 2006 at 9:40 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, Indiana the Indiana State Board of Animal Health will hold a public hearing on a proposed amendment to 345 IAC 2.5-3-2 to reduce from six (6) months to sixty (60) days the period following a whole herd test for tuberculosis during which animals may be moved into the state from modified accredited or accreditation preparatory states or zones without an individual tuberculin test and to make other technical changes in the law of tuberculosis control.

The proposed changes are necessary to resolve a conflict with federal tuberculosis regulations governing interstate movement of animals in 9 CFR 77.12 and 9 CFR 77.14.

Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 Indianapolis, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bret D. Marsh, D.V.M.
Indiana State Veterinarian
Indiana State Board of Animal Health

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #05-216

DIGEST

Amends 345 IAC 1-3-17 and 345 IAC 1-3-19 concerning the movement of sheep and goats into Indiana. Repeals 345 IAC 7-5-17 and 345 IAC 7-5-18 concerning identification and health requirements for exhibiting sheep and goats. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to This Rule:

The rule will affect persons moving sheep and goats into the state or exhibiting sheep and goats in the state.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Imposed on Small Businesses:

The proposed changes do not impose any new reporting, record keeping, or other administrative costs.

Estimated Total Annual Economic Impact on Small Businesses:

The proposed changes remove requirements imposed on individuals and small businesses. There is no annual economic impact on small businesses.

Justification for Costs:

There are no additional requirements or costs on small businesses.

Regulatory Flexibility Analysis:

The proposed changes remove requirements imposed on individuals and small businesses.

Supporting Data, Studies, or Analyses:

The Board did not rely on any studies in reaching the conclusions in this economic impact statement.

345 IAC 1-3-17
345 IAC 1-3-19
345 IAC 7-5-17
345 IAC 7-5-18

SECTION 1. 345 IAC 1-3-17 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-3-17 Sheep; applicability; importation restrictions

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-21-6

Sec. 17. ~~(a)~~ **A person moving** sheep **into the state** must meet the ~~provisions of 345 IAC 1-3-1 through 345 IAC 1-3-5.~~

~~(b) Sheep from a flock where sore mouth, foot rot or caseous lymphadenitis exists are not eligible for entry into Indiana except for immediate slaughter.~~ **requirements in 345 IAC 5-5 and the applicable requirements in this rule.** *(Indiana State Board of Animal Health; Reg 76-1, Title V, Sec 1; filed Aug 10, 1976, 10:29 a.m.: Rules and Regs. 1977, p. 133; filed May 2, 1983, 10:02 a.m.: 6 IR 1044; filed Jan 8, 1986, 2:52 p.m.: 9 IR 996; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)*

SECTION 2. 345 IAC 1-3-19 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-3-19 Goats; prohibitions

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-21-6

Sec. 19. ~~(a)~~ **A person moving** goats **into the state** must meet the ~~provisions of 345 IAC 1-3-1 through 345 IAC 1-3-5.~~

~~(b) Goats from herds~~ **requirements** in ~~which sore mouth, foot rot or caseous lymphadenitis exists may not be imported into Indiana except for immediate slaughter.~~ **345 IAC 5-5 and the applicable requirements in this rule.** *(Indiana State Board of Animal Health; Reg 76-1, Title VI, Sec 1; filed Aug 10, 1976, 10:29 a.m.: Rules and Regs. 1977, p. 134; filed May 2, 1983, 10:02 a.m.: 6 IR 1044; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)*

SECTION 3. THE FOLLOWING ARE REPEALED: 345 IAC 7-5-17; 345 IAC 7-5-18.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 19, 2006 at 9:35 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, Indiana the Indiana State Board of Animal Health will hold a public hearing on proposed amendments to 345 IAC 1-3 concerning the movement of sheep and goats into Indiana and 345 IAC 7-5 concerning identification and health requirements for exhibiting sheep and goats.

The proposed changes remove requirements imposed on individuals and small businesses.

Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bret D. Marsh, D.V.M.
Indiana State Veterinarian
Indiana State Board of Animal Health

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

Proposed Rule
LSA Document #05-215

DIGEST

Adds 357 IAC 1-12 to establish definitions for the term drift and other related terms and to prohibit anyone from applying a pesticide in a manner that results in drift of the pesticide from the target site in sufficient quantities to cause harm to a nontarget site. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The proposed rule would not impose requirements or costs under IC 4-22-2-24(d)(3). The proposal would establish a clear state definition of pesticide drift and would prohibit applying pesticides in a manner that would allow sufficient quantities of pesticide to move off-target so as to cause harm. Careful use of pesticides and minimizing off-target drift are already required by both federal and state statutes. Therefore, this clarification and establishment of a compliance baseline would not create new requirements or regulatory burdens for pesticide application businesses or other pesticide applicators.

357 IAC 1-12

SECTION 1. 357 IAC 1-12 IS ADDED TO READ AS FOLLOWS:

Rule 12. Pesticide Drift

357 IAC 1-12-1 Definitions
Authority: IC 15-3-3.6-4
Affected: IC 15-3-3.6-14

Sec. 1. The following definitions apply throughout this rule:
(1) "Drift" means the physical movement of a pesticide through the air at the time of application from the target site to a nontarget site. The term shall not mean the movement of a pesticide, at a time after the application has been made, by any of the following:
(A) Erosion.
(B) Volatility after deposition on the target site.
(C) Windblown soil particles.
(2) "Nontarget site" means any site that is not the intended target site of the pesticide application, including, but not limited to, the following:
(A) Personal property.
(B) Public property.
(C) A body of water.
(D) A person.
(E) An animal.
(F) Livestock.
(G) Managed bees.
(H) A commodity.
(I) A desirable plant.
(3) "Standards" means the legally enforceable limits, as established by state or federal regulations.
(4) "Sufficient quantity to cause harm" means an amount of pesticide that results in any of the following:
(A) Pesticide residues in excess of established tolerances or standards.
(B) Documented:
(i) death;
(ii) illness;
(iii) stunting;
(iv) deformation;
(v) discoloration; or
(vi) other effects;
that are detrimental to the nontarget site.
(5) "Target site" means the specific site to which a pesticide was intentionally applied.
(6) "Tolerance" means the maximum amount of a pesticide residue, as established by the U.S. Environmental Protection Agency, that may lawfully remain on or in food or animal feed.
(7) "Volatility" means the ability of a pesticide to move to a nontarget site as a vapor rather than as a:
(A) drift particle; or
(B) spray droplet.
(Indiana Pesticide Review Board; 357 IAC 1-12-1)

357 IAC 1-12-2 Drift restriction
Authority: IC 15-3-3.6-4
Affected: IC 15-3-3.6-14

Sec. 2. A person may not apply a pesticide in a manner that allows it to drift from the target site in sufficient quantity to cause harm to a nontarget site. *(Indiana Pesticide Review Board; 357 IAC 1-12-2)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 16, 2006 at 9:00 a.m., at the Office of the Indiana State Chemist, Purdue University, 175 South University Street, Room A151, West Lafayette, Indiana the Indiana Pesticide Review Board will hold a public hearing on a proposed new rule to establish definitions for the term drift and other related terms and to prohibit anyone from applying a pesticide in a manner that results in drift of the pesticide from the intended target site in sufficient quantities to cause harm to a nontarget site.

This proposed rule would not impose any requirements or costs under IC 4-22-2-24(d)(3).

Copies of these rules are now on file at the Office of the Indiana State Chemist, Purdue University, 175 South University Street, West Lafayette, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David E. Scott
Secretary
Indiana Pesticide Review Board

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule
LSA Document #05-209

DIGEST

Adds 405 IAC 6-10 and 405 IAC 8 to implement a program to complement the federal Medicare Prescription Drug Benefit and to establish program eligibility and enrollment guidelines. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Indiana Code 4-22-2.1-5 requires an agency to submit to the Legislative Services Agency and the Indiana Economic Development Corporation a statement of economic impact of any proposed rule with an economic impact on Small Businesses. The IEDC is required to review the rule and submit written comments to the agency not later than seven days before the public hearing.

The Office of Medicaid Policy and Planning has reviewed the proposed rule to determine the economic impact of the rule on small businesses. The Office of Medicaid Policy and Planning has determined, based on the information available at the time of rule promulgation, that the proposed rule does not impose requirements or costs on small businesses. Therefore, the agency did not submit a statement of economic impact to the Legislative Services Agency and the Indiana Economic Development Corporation.

In reaching this conclusion, the agency determined that the proposed rule is providing a benefit that will indirectly benefit pharmacies. The agency is providing the benefit that will wrap around services mandated by the Medicare Modernization Act.

405 IAC 6-10
405 IAC 8

SECTION 1. 405 IAC 6-10 IS ADDED TO READ AS FOLLOWS:

Rule 10. Discontinuance of the Indiana Prescription Drug Program Point of Service Drug Card

405 IAC 6-10-1 General provisions
Authority: IC 12-10-16-5
Affected: IC 12-10-16-3

Sec. 1. Under IC 12-10-16-3, the office hereby adopts and promulgates this article to phase out the IPDP discount card program and transition members to the federal Medicare Part D program. *(Office of the Secretary of Family and Social Services; 405 IAC 6-10-1)*

405 IAC 6-10-2 Definitions
Authority: IC 12-10-16-5
Affected: IC 12-10-16-3

Sec. 2. (a) The definitions in this section apply throughout this rule unless the context clearly indicates another meaning.

(b) "Centers for Medicare and Medicaid Services" means the federal administrator of the Medicare prescription drug benefit.

(c) "Enhanced Medicare Part D plan" means a Medicare Part D plan that is not considered standard or basic actuarially equivalent standard coverage by the Centers for Medicare and Medicaid Services.

(d) "Full low-income subsidy" means the Centers for Medicare and Medicaid Services benefit provided to eligible low-income individuals enrolled in the Medicare prescription drug benefit. Full low-income subsidy eligible individuals:

(1) are not required to pay monthly premiums or an annual deductible;
(2) have small copayments; and
(3) have no gap in coverage.

Eligibility is determined by the Social Security Administration.

(e) "Low-income subsidy" means either a:

(1) full low-income subsidy; or
(2) partial low-income subsidy;
as determined by the Social Security Administration.

(f) "Low-income subsidy application" means the Application for Help with Medicare Prescription Drug Plan Costs, which is processed and administered through the Social Security Administration.

(g) "Low-income subsidy premium" means the maximum amount the low-income subsidy will pay towards a Medicare Part D beneficiary's monthly premium in the state of Indiana, as determined by the Centers for Medicare and Medicaid Services and adjusted annually.

(h) "Medicare-advantage prescription drug plan" means an entity authorized by the Centers for Medicare and Medicaid Services to provide prescription drug coverage to Medicare Advantage beneficiaries.

(i) "Medicare Part D plan" means a:
(1) Medicare prescription drug plan; or
(2) Medicare-Advantage prescription drug plan.

(j) "Member" means a person who has:
(1) met all eligibility requirements; and
(2) been enrolled in the Indiana prescription drug program.

(k) "Partial low-income subsidy" means the Centers for Medicare and Medicaid Services benefit provided to eligible low-income individuals enrolled in the Medicare prescription drug benefit. Partial low-income subsidy eligible individuals are eligible for the following:
(1) Reduced premiums on a sliding scale.
(2) A maximum annual deductible of fifty dollars ($50).
(3) Fifteen percent (15%) copayments.
(4) No gap in coverage.
Eligibility is determined by the Social Security Administration.

(l) "Premium" means the monthly cost of being enrolled in a Medicare Part D plan.

(m) "Standard" means a Medicare Part D plan that is considered standard or basic actuarially equivalent standard coverage by the Centers for Medicare and Medicaid Services. The term does not include enhanced Medicare Part D plans. *(Office of the Secretary of Family and Social Services; 405 IAC 6-10-2)*

405 IAC 6-10-3 Benefits
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. (a) The IPDP drug card program will end on December 31, 2005.

(b) Any benefit dollars remaining on IPDP member drug cards will no longer be available to the member after December 31, 2005.

(c) December 31, 2005, will be the last date of service that pharmacy providers will be able to submit a claim to the IPDP.

(d) The IPDP shall accept reversals and rebills electronically ninety (90) days after December 31, 2005. *(Office of the Secretary of Family and Social Services; 405 IAC 6-10-3)*

405 IAC 6-10-4 Transition to Medicare Part D plan; auto-assignment for full low-income subsidy beneficiaries
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 4. (a) The program may, to the extent it can identify IPDP members that have been determined eligible for full low-income subsidy from the Centers for Medicare and Medicaid Services, randomly assign members to Medicare prescription drug plans offering standard coverage with a monthly premium below the low-income subsidy premium amount in compliance with subsection (b). In the event the same entity offers more than one (1) such Medicare prescription drug plan in the state, the program will assign members randomly among the entity's eligible Medicare prescription drug plans.

(b) The program shall only auto-assign members to Medicare prescription drug plans that have agreed to accept electronic auto-assignment from the program in a manner defined by the program.

(c) Married couples auto-assigned by the office shall be assigned to the same Medicare prescription drug plan whenever possible.

(d) The program will send the member a letter notifying them that they will have at least thirty (30) calendar days to select a Medicare Part D plan. If no selection has been made within the period of not less than thirty (30) calendar days, the office may auto-assign the member to a Medicare prescription drug plan that has contracted with the IPDP to receive auto-assignment.

(e) A member may opt out of the auto-assignment by calling or writing the IPDP before the end of the thirty (30) calendar day period.

(f) Any member that has not selected a Medicare Part D plan before the end of the initial enrollment period, that is otherwise eligible for the program, may be auto-assigned to a Medicare Part D plan, before the end of the thirty (30) calendar day opt-out period.

(g) If a member is enrolled in a Medicare-Advantage organization, the office may assign the member to the Medicare-Advantage prescription drug plan being offered by the same entity. If the Medicare-Advantage organization in which the member is enrolled does not offer Medicare prescription drug benefits, the office may randomly assign the member to a Medicare prescription drug plan. *(Office of the Secretary of Family and Social Services; 405 IAC 6-10-4)*

405 IAC 6-10-5 Transition to Medicare Part D plan; auto-assignment for partial low-income subsidy beneficiaries

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 5. (a) The program may, to the extent it can identify IPDP members that have been determined eligible for partial low-income subsidy from the Centers for Medicare and Medicaid Services, randomly assign members to Medicare prescription drug plans offering standard coverage, with a monthly premium below the low income subsidy premium amount, that have contracted with the program to administer IPDP assistance with Medicare Part D premiums and other Medicare Part D plan costs. In the event the same entity offers more than one (1) such Medicare prescription drug plan in the state, the program will assign members randomly among the entity's eligible Medicare prescription drug plans.

(b) The program shall only auto-assign members to Medicare Part D plans that have agreed to accept electronic auto-assignment from the program in a manner defined by the program.

(c) Married couples auto-assigned by the office shall be assigned to the same Medicare Part D plan whenever possible.

(d) The program will send the member a letter notifying them that they will have at least thirty (30) calendar days to select a Medicare Part D plan. If no selection has been made within the period of not less than thirty (30) calendar days, the office may auto-assign the member to a Medicare prescription drug plan that has contracted with the IPDP to receive auto-assignment.

(e) A member may not receive IPDP assistance with Medicare Part D premiums and other Medicare Part D plan costs if he or she enrolls in a Medicare Part D plan that has not contracted with the program to administer such benefits.

(f) A member may opt out of the auto-assignment by calling or writing the IPDP before the end of the thirty (30) calendar day period.

(g) Any member that has not selected a Medicare Part D plan before the end of the initial enrollment period, that is otherwise eligible for the program, may be auto-assigned to a Medicare Part D plan that has contracted with the program to administer IPDP assistance with Medicare Part D premiums and other Medicare Part D plan costs before the end of the member's thirty (30) calendar day opt-out period.

(h) If member is enrolled in a Medicare-Advantage organization, the office may assign the member to the Medicare-Advantage prescription drug plan being offered by the same entity. If the Medicare-Advantage organization in which the member is enrolled does not offer Medicare prescription drug benefits, the office may randomly assign the member to a Medicare prescription drug plan. *(Office of the Secretary of Family and Social Services; 405 IAC 6-10-5)*

SECTION 2. 405 IAC 8 IS ADDED TO READ AS FOLLOWS:

ARTICLE 8. INDIANA PRESCRIPTION DRUG PROGRAM MEDICARE WRAPAROUND BENEFIT

Rule 1. General Provisions

405 IAC 8-1-1 Intent and purpose

Authority: IC 12-10-16-5
Affected: IC 12-10-16-3

Sec. 1. Under IC 12-10-16-3, the office hereby adopts and promulgates this article to do the following:

(1) Interpret and implement provisions of IC 12-10-16-3 to provide assistance to low-income seniors with the expense of participating in a Medicare Part D plan.

(2) Ensure the efficient, economical, and reasonable operations of the Indiana prescription drug program.

(Office of the Secretary of Family and Social Services; 405 IAC 8-1-1)

Rule 2. Definitions

405 IAC 8-2-1 Applicability

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. The definitions in this rule apply throughout this article unless the context clearly indicates another meaning. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-1)*

405 IAC 8-2-2 "Applicant" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 2. "Applicant" means the person for whom Indiana prescription drug program enrollment is requested. *(Office*

of the Secretary of Family and Social Services; 405 IAC 8-2-2)

405 IAC 8-2-3 "Benefit period" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. "Benefit period" means a specified time frame during which a member is concurrently enrolled in both a Medicare Part D plan and the Indiana prescription drug program. The benefit period shall not exceed one (1) calendar year beginning in January with limits specified in 405 IAC 8-6-4. The benefit shall not be paid or begin until the first day of the first month in which:
(1) the member has an active effective date in a Medicare Part D plan; and
(2) the member's Medicare Part D plan recognizes the member's enrollment in the IPDP.
(Office of the Secretary of Family and Social Services; 405 IAC 8-2-3)

405 IAC 8-2-4 "Centers for Medicare and Medicaid Services" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 4. "Centers for Medicare and Medicaid Services" means the federal administrator of the Medicare prescription drug benefit. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-4)*

405 IAC 8-2-5 "Complete applicant file" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 5. (a) "Complete applicant file" means an enrollment form for the Indiana prescription drug program that includes the following information about the applicant and applicant's spouse, if applicable:
(1) Name.
(2) Address of domicile.
(3) Date of birth.
(4) Social Security number.
(5) Medicare Health Insurance Claim Number (HICN).
(6) Marital status.
(7) Signature.
(8) Proof of low-income subsidy determination by the Social Security Administration. Proof includes either a letter of determination from the Social Security Administration or electronic confirmation provided by the Centers for Medicare and Medicaid Services.
(9) Proof of enrollment in a Medicare prescription drug plan. Acceptable proof should be electronic confirmation provided by the Centers for Medicare and Medicaid Services.

(b) Applicants may provide information to the office by mail, facsimile, or telephone or over the internet. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-5)*

405 IAC 8-2-6 "Deductible" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 6. "Deductible" means the amount a beneficiary must pay out-of-pocket before the member's Medicare Part D plan begins to cover prescription drug costs during each benefit period. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-6)*

405 IAC 8-2-7 "Domicile" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 7. "Domicile" means the applicant's:
(1) true;
(2) fixed;
(3) principal; and
(4) permanent;
home. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-7)*

405 IAC 8-2-8 "Eligible" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 8. "Eligible" means a person who meets all requirements for enrollment in the program. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-8)*

405 IAC 8-2-9 "Enhanced Medicare Part D plan" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 9. "Enhanced Medicare Part D plan" means a Medicare Part D plan that is not considered standard or basic actuarially equivalent standard coverage by the Centers for Medicare and Medicaid Services. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-9)*

405 IAC 8-2-10 "Federal poverty limit" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 10. "Federal poverty limit" means the nonfarm income official poverty guideline as determined by the federal Office of Management and Budget. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-10)*

405 IAC 8-2-11 "Full low-income subsidy" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 11. "Full low-income subsidy" means the full extra help for paying for Medicare prescription drug plan costs provided by the Centers for Medicare and Medicaid Services (CMS). According to CMS, beneficiaries receiving

"full low-income subsidy" will:

(1) not be responsible for monthly premium costs for basic Medicare Part D plans;

(2) have no annual deductible; and

(3) have no gap in coverage.

(Office of the Secretary of Family and Social Services; 405 IAC 8-2-11)

405 IAC 8-2-12 "Income" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 12. "Income" means the amount of money or its equivalent received as follows:

(1) In exchange for or as a result of labor or services.

(2) From the sale of goods or property.

(3) As profits from financial investments.

(Office of the Secretary of Family and Social Services; 405 IAC 8-2-12)

405 IAC 8-2-13 "Indiana prescription drug program" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 13. "Indiana prescription drug program" means the program established by IC 12-10-16. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-13)*

405 IAC 8-2-14 "Initial enrollment period"

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 14. "Initial enrollment period" means the Medicare Part D initial enrollment period ending May 15, 2005, as defined in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-14)*

405 IAC 8-2-15 "Low-income subsidy" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 15. "Low-income subsidy" means either a:

(1) full low-income subsidy; or

(2) partial low-income subsidy;

as determined by the Social Security Administration. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-15)*

405 IAC 8-2-16 "Low-income subsidy application" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 16. "Low-income subsidy application" means the Application for Help with Medicare Prescription Drug Plan Costs, which is processed and administered through the Social Security Administration. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-16)*

405 IAC 8-2-17 "Low-income subsidy determination" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 17. "Low-income subsidy determination" means a definitive determination from the Social Security Administration as to an applicant's eligibility for the low-income subsidy. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-17)*

405 IAC 8-2-18 "Low-income subsidy premium" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 18. "Low-income subsidy premium" means the maximum amount the low-income subsidy will pay towards a Medicare Part D beneficiary's monthly premium in the state of Indiana, as determined by the Centers for Medicare and Medicaid Services and adjusted annually. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-18)*

405 IAC 8-2-19 "Medicare-Advantage prescription drug plan" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 19. "Medicare-Advantage prescription drug plan" means an entity authorized by the Centers for Medicare and Medicaid Services to provide prescription drug coverage to Medicare-Advantage beneficiaries. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-19)*

405 IAC 8-2-20 "Medicare Part D plan" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 20. "Medicare Part D plan" means a:

(1) Medicare prescription drug plan; or

(2) Medicare-Advantage prescription drug plan.

(Office of the Secretary of Family and Social Services; 405 IAC 8-2-20)

405 IAC 8-2-21 "Medicare prescription drug plan" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 21. "Medicare prescription drug plan" means an entity authorized by the Centers for Medicare and Medicaid Services to provide prescription drug coverage to Medicare beneficiaries. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-21)*

405 IAC 8-2-22 "Member" defined

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 22. "Member" means a person who has:
(1) met all eligibility requirements; and
(2) been enrolled in the Indiana prescription drug program.
(Office of the Secretary of Family and Social Services; 405 IAC 8-2-22)

405 IAC 8-2-23 "Noncovered drug" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 23. "Noncovered drug" means a drug that is:
(1) not on a Medicare Part D plan's formulary; or
(2) being treated as so as a result of a coverage determination or appeal.
(Office of the Secretary of Family and Social Services; 405 IAC 8-2-23)

405 IAC 8-2-24 "Not eligible for the Indiana prescription drug program" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 24. "Not eligible for the Indiana prescription drug program" means the applicant does not meet one (1) or more of the eligibility requirements for enrollment in the program. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-24)*

405 IAC 8-2-25 "Office" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 25. "Office" means the office of the secretary of family and social services. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-25)*

405 IAC 8-2-26 "Partial low-income subsidy" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 26. "Partial low-income subsidy" means the partial extra help for paying for Medicare prescription drug plan costs provided by the Centers for Medicare and Medicaid Services (CMS). According to CMS, beneficiaries receiving "partial low-income subsidy" will:
(1) be responsible for monthly premium on a sliding scale for standard Medicare Part D plans;
(2) have a reduced annual deductible; and
(3) have no gap in coverage.
(Office of the Secretary of Family and Social Services; 405 IAC 8-2-26)

405 IAC 8-2-27 "Premium" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 27. "Premium" means the monthly cost of being enrolled in a Medicare prescription drug plan. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-27)*

405 IAC 8-2-28 "Prescription drug" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 28. "Prescription drug" means any prescription drug that is not a noncovered drug. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-28)*

405 IAC 8-2-29 "Program" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 29. "Program" means the Indiana prescription drug program. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-29)*

405 IAC 8-2-30 "Proof of income" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 30. "Proof of income" means documentation of the income of an applicant and an applicant's family. Proof of income for the program should be provided by the Social Security Administration through the low-income subsidy application. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-30)*

405 IAC 8-2-31 "Provider" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 31. "Provider" means an entity that:
(1) provides Medicare prescription drug coverage through a Medicare Part D plan in the state of Indiana; and
(2) participates in the program in accordance with 405 IAC 8-6-1(a) and 405 IAC 8-6-2(b).
(Office of the Secretary of Family and Social Services; 405 IAC 8-2-31)

405 IAC 8-2-32 "Secretary" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 32. "Secretary" means the secretary of family and social services. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-32)*

405 IAC 8-2-33 "Senior" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 33. "Senior" means a person at least sixty-five (65) years of age. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-33)*

405 IAC 8-2-34 "Spouse" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 34. "Spouse" means the legal husband or wife of an applicant. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-34)*

405 IAC 8-2-35 "Standard" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 35. "Standard" means a Medicare Part D plan that is considered standard or basic actuarially equivalent standard coverage by the Centers for Medicare and Medicaid Services. The term excludes enhanced plans. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-35)*

405 IAC 8-2-36 "True out-of-pocket costs" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 36. "True out-of-pocket costs" means prescription drug costs that count towards a member's Medicare Part D plan maximum out-of-pocket costs. *(Office of the Secretary of Family and Social Services; 405 IAC 8-2-36)*

Rule 3. Eligibility Requirements

405 IAC 8-3-1 Age
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. To be eligible for the program, an applicant must be at least sixty-five (65) years of age. *(Office of the Secretary of Family and Social Services; 405 IAC 8-3-1)*

405 IAC 8-3-2 Income
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 2. To be eligible for the program, an applicant's income must not exceed one hundred fifty percent (150%) of the federal poverty limit applicable to the individual's family size, as defined by the federal Office of Management and Budget. *(Office of the Secretary of Family and Social Services; 405 IAC 8-3-2)*

405 IAC 8-3-3 Ineligibility
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. Notwithstanding any other provision of this article, an individual is not eligible for the program if any of the following apply:
(1) The applicant is not a Medicare beneficiary.
(2) The individual:
(A) is not domiciled in Indiana;
(B) does not intend to reside permanently in the state of Indiana;
(C) has not received a low-income subsidy determination from the Social Security Administration;
(D) has been determined eligible for full low-income subsidy;
(E) is dually eligible for both Medicare and Medicaid;
(F) is an inmate of a correctional facility; or
(G) is not enrolled in a Medicare Part D plan.
(Office of the Secretary of Family and Social Services; 405 IAC 8-3-3)

Rule 4. Application and Enrollment

405 IAC 8-4-1 General requirements
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. (a) A completed applicant file will be processed by the office and must include verification of the following:
(1) That an applicant has completed the Application for Help with Medicare Prescription Drug Plan Costs and received a determination from the Social Security Administration.
(2) Of an applicant's enrollment in a Medicare Part D plan that has contracted with the IPDP to provide state benefits in coordination with Medicare Part D.

(b) Applicant file information may be submitted to the office by mail or telephone or over the Internet.

(c) An applicant who does not have a complete applicant file will be determined pending. Such an applicant may submit requirements necessary to complete their applicant file to receive a determination from the office. An applicant file that has been pending for sixty (60) calendar days may be closed and determined ineligible by the office. An applicant's application file date will begin the date the office receives an IPDP enrollment form.

(d) After a completed applicant file has been processed and approved by the office, the office will notify the member's Medicare Part D plan of the member's eligibility for benefits under the IPDP. *(Office of the Secretary of Family and Social Services; 405 IAC 8-4-1)*

Rule 5. Auto-Assignment to a Medicare Prescription Drug Plan

405 IAC 8-5-1 Auto-assignment
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. (a) If, according to the Centers for Medicare and Medicaid Services, an applicant otherwise eligible for the Indiana prescription drug program has not selected a Medicare Part D plan, the program may randomly assign

the member to a Medicare prescription drug plan that has contracted with the IPDP.

(b) The applicant will be sent a letter notifying them that they will have at least thirty (30) calendar days to select a Medicare prescription drug plan that has contracted with the IPDP. If no selection has been made within the period of not less than thirty (30) calendar days, the office may auto-assign the applicant to a Medicare prescription drug plan that has contracted with the IPDP. An applicant may opt out of the auto-assignment by calling or writing the IPDP before the end of the thirty (30) calendar day period.

(c) Married couples auto-assigned by the office will be assigned to the same Medicare Part D plan when possible.

(d) Any applicant that has not selected a Medicare Part D plan before the end of the initial enrollment period, that is otherwise eligible for the program, may be auto-assigned to a Medicare Part D plan before the end of the thirty (30) calendar day opt-out period. *(Office of the Secretary of Family and Social Services; 405 IAC 8-5-1)*

Rule 6. Benefits

405 IAC 8-6-1 Assistance with Medicare prescription drug plan monthly premium and other Medicare Part D plan costs

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. (a) An eligible member may receive:
(1) premium assistance for the monthly premium cost of the:
(A) Medicare prescription drug plan; or
(B) Medicare-Advantage prescription drug plan; and
(2) assistance with other Medicare prescription drug plan costs as defined in section 2 of this rule;
if the member enrolls, or has been auto-enrolled, into a Medicare Part D plan that has contracted with the IPDP to provide such benefits.

(b) The amount of premium assistance provided by the IPDP shall not exceed the low-income subsidy premium amount per month.

(c) The premium assistance benefit shall be paid directly to the Medicare Part D plan in which the eligible IPDP member is enrolled.

(d) Premium assistance provided by the IPDP will be reduced by the amount of premium assistance a member receives from the Centers for Medicare and Medicaid Services.

(e) The IPDP member is responsible for any premium amount above the low-income subsidy premium per month.

(f) IPDP premium assistance:
(1) may only be applied to the prescription drug portion of a Medicare-Advantage prescription drug plan's monthly premium; and
(2) shall not pay for the medical portion of the Medicare-Advantage prescription drug plan monthly premium.

(g) IPDP premium assistance shall not pay for any portion of the Medicare Part D premium related to late-enrollment penalties. *(Office of the Secretary of Family and Social Services; 405 IAC 8-6-1)*

405 IAC 8-6-2 Deductible or coinsurance assistance benefit

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 2. (a) An eligible member may receive not more than two hundred fifty dollars ($250) in annual benefits to be applied to his or her Medicare Part D plan deductible or coinsurance requirements.

(b) IPDP deductible or coinsurance assistance benefits shall only be available to IPDP members enrolled in a Medicare Part D plan that has contracted with the IPDP to provide the benefits.

(c) Benefit dollars will be available for a remainder of the benefit period, beginning on the date of enrollment in the IPDP. Benefits not used before the end of this period will not be available to the member. Benefits shall not be paid on a IPDP member's behalf until the member is effectively enrolled in a Medicare Part D plan that has contracted with the IPDP.

(d) The IPDP will pay benefits, up to the two hundred fifty dollar ($250) annual limit, directly to the Medicare Part D plan in which the member is enrolled.

(e) IPDP benefits shall:
(1) only be available for prescription drug plan costs that are countable to the beneficiary's true out-of-pocket costs; and
(2) not be used to pay for noncovered drugs.
(Office of the Secretary of Family and Social Services; 405 IAC 8-6-2)

405 IAC 8-6-3 Assistance with Medicare prescription drug plan monthly premium only

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. (a) An eligible member may receive assistance for the monthly premium cost of the Medicare prescription drug plan or Medicare-Advantage prescription drug plan

in which the member is enrolled. Premium assistance shall be available provided the IPDP member:

(1) enrolls in a Medicare Part D plan offering standard coverage in the state of Indiana; and

(2) has a premium at or below the low-income premium subsidy amount, as determined by the Centers for Medicare and Medicaid Services.

(b) The amount of premium assistance provided by the IPDP shall not exceed the low-income subsidy premium per month.

(c) The premium assistance benefit shall be paid directly to the Medicare Part D plan in which the eligible IPDP member is enrolled.

(d) Premium assistance provided by the IPDP shall be reduced by the amount of premium assistance a member receives from the Centers for Medicare and Medicaid Services.

(e) The IPDP member shall be responsible for any premium amount above the low-income subsidy premium per month.

(f) IPDP premium assistance:

(1) may only be applied to the prescription drug portion of a Medicare-Advantage prescription drug plan's monthly premium; and

(2) shall not pay for the medical portion of the Medicare-Advantage prescription drug plan monthly premium.

(g) IPDP premium assistance shall not pay for any portion of the Medicare Part D premium related to late-enrollment penalties. *(Office of the Secretary of Family and Social Services; 405 IAC 8-6-3)*

405 IAC 8-6-4 Benefit limitations
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 4. (a) Benefits are available under sections 2 and 3 of this rule on a first come, first served basis.

(b) Benefits will exist under this program to the extent that appropriations are available for the program.

(c) The state budget director shall determine if appropriations are available to continue offering and paying benefits for members.

(d) Upon determination that program benefits will meet or exceed budget, program will implement a waiting list for further benefits, beginning with the members who:

(1) do not receive any partial subsidy from Medicare; and

(2) are between one hundred thirty-five percent (135%) and one hundred fifty percent (150%) FPL.

(Office of the Secretary of Family and Social Services; 405 IAC 8-6-4)

Rule 7. Provider Appeal; Records

405 IAC 8-7-1 Provider appeal procedures
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. All provider appeals from office action taken under this article shall be governed by the procedures and time limits for Medicaid providers set out in 405 IAC 1-1.5 and 405 IAC 8-8-1, if applicable. *(Office of the Secretary of Family and Social Services; 405 IAC 8-7-1)*

405 IAC 8-7-2 Provider records
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 2. The provisions of 405 IAC 1-5 concerning contents, retention, and disclosure of records of Medicaid providers shall apply to providers of:

(1) Medicare prescription drug plans; and

(2) Medicare-Advantage prescription drug plans.

(Office of the Secretary of Family and Social Services; 405 IAC 8-7-2)

Rule 8. Provider Claims; Payments; Overpayments; Sanctions

405 IAC 8-8-1 Filing of claims; filing date; payment liability
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. (a) All Medicare prescription drug plan and Medicare-Advantage prescription drug plan claims for payment for Indiana prescription drug program member benefits must be originally filed with the office's contractor within twelve (12) months of the date of the provision of the service. A provider who is dissatisfied with the amount of his or her reimbursement may appeal under the provisions of 405 IAC 8-7-1. However, before filing an appeal, the provider must do one (1) of the following:

(1) Resubmit the claim if the reason for denial of payment was due to incorrect or inaccurate billing by the provider.

(2) Submit, if appropriate, an adjustment request to the office contractor's adjustment and resolution unit.

(3) Submit a written request to the office's contractor stating why the provider disagrees with the denial or amount of reimbursement.

(b) All requests for payment adjustments or reconsideration of a claim that has been denied must be submitted to the office's contractor within sixty (60) days of the date of notification that the claim was paid or denied. In order to be considered for payment, each subsequent claim

resubmission or adjustment request must be submitted within sixty (60) days of the most recent notification that the claim was paid or denied. The date of notification shall be considered to be three (3) days following the date of mailing from the office's contractor. All claims filed after twelve (12) months of the date of payment of benefits, as well as claims filed after sixty (60) days of the date of notification that the claim was paid or denied shall be rejected for payment unless a waiver has been granted. In extenuating circumstances, a waiver of the filing limit may be authorized by the contractor or the office when justification is provided to substantiate why the claim could not be filed or refiled within the filing limit. Some examples of situations considered to be extenuating circumstances are as follows:

(1) Contractor or state error or action that has delayed payment.

(2) Reasonable and continuous attempts on the part of the provider to resolve a claim problem.

(c) All claims filed for reimbursement shall be reviewed before payment by the office or its contractor for the following:

(1) Completeness, including required documentation.

(2) Accuracy and appropriateness as indicated.

(d) The office is only liable for the payment of claims filed by the Medicare Part D plan that were authorized by the appropriate federal and state agencies as providers at the time the service was rendered and for services provided to persons who were enrolled in the Indiana prescription drug program as members at the time service was provided. The claim will not be paid if the services provided are outside the service parameters as established by the office.

(e) A provider shall collect from:

(1) a member; or

(2) the authorized representative of the member;

that portion of his or her premium above any benefit paid by the Indiana prescription drug program. *(Office of the Secretary of Family and Social Services; 405 IAC 8-8-1)*

405 IAC 8-8-2 Denial of claim payment; basis

Authority: IC 12-10-16-5
Affected: IC 4-21.5-3-7; IC 4-21.5-4; IC 12-10-16

Sec. 2. (a) The office may deny payment, or instruct the contractor to deny payment, if, after investigation by the office, the office's designee, or other governmental authority, the office finds any of the following:

(1) The benefit cannot be documented by the provider in accordance with 405 IAC 8-7-2.

(2) The services claimed were provided to a person other than a person in whose name the claim is made.

(3) The benefit was provided to a person who was not eligible for benefits at the time of the provision of the service.

(4) The claim arises out of any of the following acts or practices:

(A) Presenting, or causing to be presented, for payment any false or fraudulent claim.

(B) Submitting, or causing to be submitted, information for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

(C) Submitting, or causing to be submitted, any false information.

(D) Engaging in a course of conduct or performing an act deemed by the office to be improper or abusive of the program or continuing the conduct following notification that the conduct should cease.

(E) A breach of the terms of the Indiana prescription drug program provider agreement or contract.

(F) Violating any provision of state law or any rule or regulation promulgated under this article or any provider bulletin published thereto.

(G) Submission of a false or fraudulent application for provider status.

(H) Failure to meet standards required by the state or federal government for participating in the program.

(I) Refusal to execute a new Indiana prescription drug program provider agreement when requested by the office or the office's contractor to do so.

(J) Failure to correct deficiencies to provider operations after receiving written notice of these deficiencies from the office.

(K) Failure to repay within sixty (60) days or make acceptable arrangements for the repayment of identified overpayments or otherwise erroneous payments, except as provided in this rule.

(L) Presenting claims for which benefits are not available.

(5) The claim arises out of any act or practice prohibited by rules of the office.

(b) The decision as to denial of payment for a particular claim or claims is at the discretion of the office. This decision shall be final and:

(1) will be:

(A) mailed to the provider by United States mail at the address contained in the office records and on the claims; or

(B) transmitted electronically if the provider receives electronic remittance advices;

(2) will be effective upon receipt; and

(3) may be administratively appealed in accordance with this article.

(c) The decision as to claim payment suspension is at the discretion of the office and may include either of the following:

(1) The denial of payment for all claims that have been submitted by the provider pending further investigation by the office, the office's designee, or other governmental authority.

(2) The suspension or withholding of payment on any or all claims of the provider pending an audit or further investigation by the office, the office's designee, or other governmental authority.

(d) The decision of the office under subsection (c) shall:
(1) be served upon the provider by certified mail, return receipt requested;
(2) contain a brief description of the decision;
(3) become final fifteen (15) days after its receipt; and
(4) contain a statement that any appeal from the decision shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 8-7-1.

(e) If an emergency exists, as determined by the office, the office may issue an emergency directive suspending or withholding payment on any or all claims of the provider pending further investigation by the office, the office's designee, or other governmental authority under IC 4-21.5-4. Any order issued under this subsection shall:
(1) be served upon the provider by certified mail, return receipt requested;
(2) become effective upon receipt;
(3) include a brief statement of the facts and law that justifies the office's decision to issue an emergency directive; and
(4) contain a statement that any appeal from the decision of the assistant secretary made under this subsection shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 8-7-1.

(Office of the Secretary of Family and Social Services; 405 IAC 8-8-2)

405 IAC 8-8-3 Overpayments made to providers; recovery

Authority: IC 12-10-16-5
Affected: IC 4-21.5-3; IC 6-8.1-10-1; IC 12-10-16

Sec. 3. (a) The office may recover payment, or instruct its contractor to recover payment, from any provider after investigation or audit finds that:
(1) the benefit:
(A) paid for cannot be documented by the provider as required by 405 IAC 8-7-2;
(B) was provided to a person:
(i) other than the person in whose name the claim was made and paid; or
(ii) who was not eligible for benefits at the time of the provision of the service;
(2) the paid claim arises out of any act or practice prohibited by law or by rules of the office;
(3) overpayment resulted from duplicate billing; or
(4) overpayment to the provider resulted from any other reason not specified in this subsection.

(b) If the office determines that an overcharge has occurred, the office shall notify the provider by certified mail. The notice shall include a demand that the provider reimburse the office, within sixty (60) days of the provider's receipt of the notification, for any overcharges determined by the office. Except as provided in subsection (f), a provider who receives a notice and request for repayment may elect to do one (1) of the following:
(1) Repay the amount of the overpayment not later than sixty (60) days after receiving notice from the office, including interest from the date of overpayment.
(2) Request a hearing and repay the amount of the alleged overpayment not later than sixty (60) days after receiving notice from the office.
(3) Request a hearing not later than sixty (60) days after receiving notice from the office and not repay the alleged overpayment, except as provided in subsection (e).

(c) If:
(1) a provider elects to proceed under subsection (d)(3); and
(2) the office of the secretary determines after the hearing and any subsequent appeal that the provider owes the money;
the provider shall pay the amount of the overpayment, including interest from the date of the overpayment.

(d) The office may enter into an agreement with the provider regarding the repayment of any overpayment made to the provider. The agreement shall state that the amount of overpayment shall be deducted from subsequent payments to the provider. The subsequent payment deduction shall not exceed a period of six (6) months from the date of the agreement. The repayment agreement shall include provisions for the collection of interest on the amount of the overpayment. The interest shall not exceed the percentage rate that is determined by the commissioner of the department of state revenue under IC 6-8.1-10-1(c). Recovering interest:
(1) at a rate that is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report; and
(2) accruing from the date of overpayment on amounts paid to a provider that are in excess of the amount subsequently determined to be due the provider as a result of:
(A) an audit;
(B) a reimbursement cost settlement; or
(C) a judicial or an administrative proceeding.

(e) If the office recovers an overpayment to a provider that is subsequently found not to have been owing to the office, either in whole or in part, then the office will pay to

the provider interest on the amount erroneously recovered from the provider. The interest will accrue:

(1) from the date that the overpayment was recovered by the office until the date the overpayment is restored to the provider; and

(2) at the rate of interest set by the commissioner for interest payments from the department of state revenue to a taxpayer.

The office will not pay interest to a provider under any other circumstances.

(f) If, after receiving a notice and request for repayment, the:

(1) provider fails to elect one (1) of the options listed in subsection (b) within sixty (60) days; and

(2) administrator determines that reasonable grounds exist to suspect that the provider has acted in a fraudulent manner;

then the office shall immediately certify the facts of the case to the appropriate county prosecutor. *(Office of the Secretary of Family and Social Services; 405 IAC 8-8-3)*

405 IAC 8-8-4 Repayment of overpayment to office

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 4. (a) The office may require the repayment of any amount determined by the office to have been paid to the provider in error, before an evidentiary hearing or summary review, unless an appeal is pending and the provider has elected not to repay an alleged overpayment under section 3(d)(3) of this rule. The office may, in its discretion, recoup any overpayment to the provider by the following means:

(1) Offset the amount of the overpayment against current payments to a provider.

(2) Require that the provider satisfy the overpayment by refunding the entire amount of the overpayment to the office directly.

(3) Enter into an agreement with the provider in accordance with section 3 of this rule.

(b) Interest from the date of the overpayment will be assessed even if the provider repays the overpayment to the office within thirty (30) days after receipt of the notice of the overpayment. This subsection applies to any of the methods of recoupment set out in this section. *(Office of the Secretary of Family and Social Services; 405 IAC 8-8-4)*

405 IAC 8-8-5 Sanctions against providers; determination after investigation

Authority: IC 12-10-16-5
Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 4-21.5-4; IC 12-10-16

Sec. 5. (a) If, after investigation by the office, the office's designee, or other governmental authority, the office determines that a provider has violated any provision of IC 12-10-16, or has violated any rule established under one (1) of those sections, the office may impose one (1) or more of the following sanctions:

(1) Deny payment to the provider for services rendered during a specified period of time.

(2) Reject a prospective provider's application for participation in the program.

(3) Remove a provider's certification for participation in the program.

(4) Assess a fine against the provider in an amount not to exceed three (3) times the amounts paid to the provider in excess of the amounts that were legally due.

(5) Assess an interest charge, at a rate not to exceed the rate established within this article, on the amounts paid to the provider in excess of the amounts that were legally due. The interest charge shall accrue from the date of the overpayment to the provider.

(b) Specifically, the office may impose the sanctions in subsection (a) if, after investigation by the office, the office's designee, or other governmental authority, the office determines that the provider did any of the following:

(1) Submitted, or caused to be submitted, any of the following:

(A) Claims for benefits:

(i) that cannot be documented by the provider; or

(ii) provided to a person other than a person in whose name the claim is made.

(B) Any false or fraudulent claims for services.

(C) Information with the intent of obtaining greater compensation than that which the provider is legally entitled.

(2) Engaged in a course of conduct or performed an act deemed by the office to be abusive of the program or continuing the conduct following notification that the conduct should cease.

(3) Breached, or caused to be breached, the terms of the contract.

(4) Submitted, or caused to be submitted, any claims arising out of any act or practice prohibited by the criminal provisions of the Indiana Code or by the rules of the office.

(5) Failed to:

(A) disclose or make available to the office, the office's designee, or other governmental authority, after reasonable request and notice to do so, documentation of benefits provided to members; or

(B) meet standards required by federal or state law for participation.

(6) Refused to execute a contract when requested to do so.

(7) Failed to:

(A) correct deficiencies to provider operations after receiving written notice of these deficiencies from the office; or

(B) repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments, unless an appeal is pending and the provider has elected not to repay an alleged overpayment.

(c) The office may enter a directive imposing a sanction under IC 4-21.5-3-6. Any directive issued under this subsection shall be as follows:

(1) Be served upon the provider by certified mail, return receipt requested.

(2) Contain a brief description of the order.

(3) Become final fifteen (15) days after its receipt.

(4) Contain a statement that any appeal from the decision of the office made under this section shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 6-8-1.

(d) If an emergency exists, as determined by the office, the office may issue an emergency directive imposing a sanction under IC 4-21.5-4. Any order issued under this subsection shall be as follows:

(1) Be served upon the provider by certified mail, return receipt requested.

(2) Become effective upon receipt.

(3) Include a brief statement of the facts and law that justifies the office's decision to issue an emergency directive.

(4) Contain a statement that any appeal from the decision made under this section shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 6-8-1.

(e) The decision to impose a sanction shall be made at the discretion of the office. *(Office of the Secretary of Family and Social Services; 405 IAC 8-8-5)*

Rule 9. Member Appeals

405 IAC 8-9-1 Purpose

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. (a) The purpose of this rule is to establish a uniform method of administrative review and administrative adjudication for appeals concerning applicants and enrollees of the program, in order to determine whether or not any action for which there is a complaint was done in accordance with state statutes, regulations, rules, and policies. As used in this rule, "policies" include:

(1) program manuals;

(2) administrative directives;

(3) transmittals; and

(4) other official written pronouncements;

of state policy.

(b) This rule shall be construed in such a manner as to provide all parties with an adequate opportunity to be heard in accordance with due process of law. As used in this rule, "party" means either of the following:

(1) A person to whom the agency action is specifically directed.

(2) The office.

(c) In the event that any provision of this article is deemed to be in conflict with any other provision of state statute, regulation, or rule that is specifically applicable to the program, then such other statute, regulation, or rule shall supersede that part of this article in which the conflict is found. *(Office of the Secretary of Family and Social Services; 405 IAC 8-9-1)*

405 IAC 8-9-2 Standing

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 2. (a) In the event that the:

(1) rights;

(2) duties;

(3) obligations;

(4) privileges; or

(5) other legal relations;

of any person or entity are required or authorized by law to be determined by the office, then such person or entity may request an administrative review by the office as provided for in section 3 of this rule.

(b) Unless otherwise provided by law, only those persons or entities, or their respective attorneys at law, whose:

(1) rights;

(2) duties;

(3) obligations;

(4) privileges; or

(5) other legal relations;

are alleged to have been adversely affected by any action or determination of the office, may request administrative review under this rule. Any alleged harm to an enrollee or applicant must be direct and immediate to the party and not indirect and general in character. *(Office of the Secretary of Family and Social Services; 405 IAC 8-9-2)*

405 IAC 8-9-3 Requests for administrative review

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. (a) Any party complaining of an action of the office in accordance with this article may file a request for administrative review as provided in this section.

(b) The enrollee or applicant is required to seek administrative review before filing an administrative appeal under section 5 of this rule.

(c) Unless otherwise provided for by statute, regulation, or rule, a request for administrative review by an enrollee or applicant shall be filed in writing with the office not later

than thirty-five (35) days following the date of the action being reviewed. *(Office of the Secretary of Family and Social Services; 405 IAC 8-9-3)*

405 IAC 8-9-4 Conduct of administrative review
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 4. (a) Upon receipt of a request for administrative review, the office will conduct a review of the action.

(b) Upon completion of the review, the office will issue a written decision. The decision will be final unless a party requests an administrative appeal in accordance with this rule.

(c) The written decision shall do the following:
(1) Specify the reasons for the decision.
(2) Identify the:
(A) statutes;
(B) regulations;
(C) rules; and
(D) policies;
supporting the decision.
(Office of the Secretary of Family and Social Services; 405 IAC 8-9-4)

405 IAC 8-9-5 Filing an administrative appeal; scheduling appeals
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 5. (a) Any party who is not satisfied with the administrative review of the office as provided for in this rule may file a request for an administrative appeal as provided in this section. The person or entity requesting the administrative appeal shall be known as the appellant.

(b) Unless otherwise provided for by statute, regulation, or rule, appeal requests by an appellant shall be filed in writing with the hearings and appeals section of the family and social services administration not later than thirty (30) days following the effective date of the administrative review being appealed. Appeal hearings shall be conducted at a reasonable time, place, and date.

(c) The hearings and appeals section of the family and social services administration, upon application of any party, or in its own discretion, may consolidate appeals to promote administrative efficiency. Hearings may only be consolidated in cases in which the sole issue involved is one of state law or policy.

(d) Any party filing an appeal under this rule is not excused from exhausting all interim procedures that may be required by statute or rule for administrative review before the filing of an administrative appeal. Any issues not raised within the interim review procedures of the administrative review in a timely manner are waived and shall not be an issue during the evidentiary hearing of the administrative appeal.

(e) The hearings and appeals section of the family and social services administration will schedule evidentiary hearings and issue notices to the parties regarding the date, time, and location of the scheduled hearing.

(f) A continuance of a hearing will be granted only for good cause shown. An objection to a request for a continuance shall be considered before a continuance is granted or denied. Requests for a continuance shall be in writing and accompanied by adequate documentation of the reasons for the request. Good cause includes the following:
(1) The inability to attend the hearing because of a serious physical or mental condition.
(2) An incapacitating injury.
(3) A death in the family.
(4) Severe weather conditions making it impossible to travel to the hearing.
(5) The unavailability of a witness and the evidence cannot be obtained otherwise.
(6) Other reasons similar to those listed in this section.
If the appellant is represented by counsel, the request for continuance must also include alternative dates for the scheduling of a new hearing. However, the hearings and appeals section may schedule a new hearing without respect to the requested date if such date cannot be accommodated or confirmed with the requesting attorney within a reasonable time of the request. *(Office of the Secretary of Family and Social Services; 405 IAC 8-9-5)*

405 IAC 8-9-6 Conduct and authority of administrative law judge
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 6. (a) The conduct of an administrative law judge (ALJ) shall be in a manner that promotes public confidence in the integrity and impartiality of the administrative hearing process. The ALJ who conducts a hearing is prohibited from any of the following:
(1) Consulting any party or party's agent on any fact in issue unless upon notice and opportunity for all parties to participate.
(2) Performing any of the investigative or prosecutorial functions of the family and social services administration in the administrative appeal heard or to be heard by him or her or in a factually related administrative or judicial action.
(3) Being influenced by any of the following:
(A) Partisan interests.
(B) Public clamor.
(C) Fear of criticism.

(4) Conveying or permitting others to convey the impression that they are in a special position to influence the ALJ.
(5) Commenting publicly, except as to hearing schedules or procedures, about pending or impending proceedings.
(6) Engaging in financial or business dealings that tend to do any of the following:
(A) Reflect adversely on his or her impartiality.
(B) Interfere with the proper performance of his or her duties.
(C) Exploit the ALJ's position.
(D) Involve the ALJ in frequent financial business dealings with attorneys or other persons who are likely to come before the ALJ.

(b) An ALJ shall disqualify himself or herself in a proceeding in which:
(1) his or her impartiality might reasonably be questioned; or
(2) the ALJ's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision.
Nothing in this subsection prohibits a person who is an employee of the family and social services administration from serving as an ALJ.

(c) The ALJ shall be authorized to do the following:
(1) Administer oaths and affirmations.
(2) Issue subpoenas.
(3) Rule upon offers of proof.
(4) Receive relevant evidence.
(5) Facilitate discovery in accordance with the Indiana rules of trial procedure.
(6) Regulate the course of the hearing and conduct of the parties.
(7) Hold informal conferences for the settlement or simplification of the issues under appeal.
(8) Dispose of procedural motions and similar matters.
(9) Exercise such other powers as may be given by the law relating to the particular program area under appeal.
(Office of the Secretary of Family and Social Services; 405 IAC 8-9-6)

405 IAC 8-9-7 Conduct of hearing; hearing decisions
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 7. (a) The administrative law judge (ALJ) shall conduct the hearing in an informal manner and without recourse to the technical common law rules of evidence.

(b) The ALJ shall exclude from consideration irrelevant, immaterial, or unduly repetitious evidence.

(c) Every party shall have the right to submit evidence. In the event that an objection to evidence is sustained, the party proffering the evidence may make an offer of proof. Each party shall have the right to cross-examine the witnesses and offer rebutting evidence. *(Office of the Secretary of Family and Social Services; 405 IAC 8-9-7)*

405 IAC 8-9-8 Hearing decision
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 8. (a) Following completion of the hearing, or after submission of briefs by the parties (if briefing is permitted by the administrative law judge (ALJ)), the ALJ shall issue his or her decision in the matter concurrently to the parties. The decision shall be final unless a party requests agency review of the decision in accordance with this rule.

(b) The ALJ's decision shall do the following:
(1) Include findings of fact.
(2) Specify the reasons for the decision.
(3) Identify the evidence and statutes, regulations, rules, and policies supporting the decision.

(c) The findings of fact need not include a recitation of every piece of evidence admitted in the evidentiary hearing. Rather, the findings should contain the basic facts that have formed the basis for the ALJ's ultimate decision. The ALJ's decision must also do the following:
(1) Cite the relevant laws upon which the ultimate decision is based.
(2) Relate the facts to the law.
(Office of the Secretary of Family and Social Services; 405 IAC 8-9-8)

405 IAC 8-9-9 Agency review
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 9. (a) Any party who is not satisfied with the decision of the administrative law judge (ALJ) may request agency review of the decision within ten (10) days of receipt thereof in accordance with instructions issued with the decision.

(b) After receiving a request for agency review of a hearing decision, the hearings and appeals section of the family and social services administration shall notify the parties when the decision will be reviewed. The agency review shall be completed by the secretary of the family and social services administration or the secretary's designee. All such reviews shall be conducted upon the record, as defined in section 7 of this rule, except that a transcript of the oral testimony shall not be necessary for review unless the party requests that one be transcribed at the party's expense.

(c) No new evidence will be considered during the agency review; however, any party wishing to submit a memorandum of law, citing evidence in the record, may do so pursuant to instructions issued by the hearings and appeals

section of the family and social services administration.

(d) The secretary of family and social services administration or the secretary's designee shall review the ALJ's decision to determine if the decision is supported by the evidence in the record and is in accordance with statutes, regulations, rules, and policies applicable to the issues under appeal.

(e) Following the review of the secretary or designee, the secretary or designee shall issue a written decision doing one (1) of the following:

(1) Affirming the decision of the ALJ.

(2) Amending or modifying the decision of the ALJ.

(3) Reversing the decision of the ALJ.

(4) Remanding the matter to the ALJ for further specified action.

(5) Making such other order or determination as is proper on the record.

(f) The parties will be issued a written notice of the action taken as a result of the agency review. If the decision of the ALJ is reversed, amended, or modified, the secretary or designee shall state the reasons for the action in the written decision.

(g) The hearings and appeals section of the family and social services administration shall distribute the written notice on agency review to the following:

(1) All parties of record.

(2) The ALJ who rendered the decision following the evidentiary hearing.

(3) Any other person designated by the secretary or designee.

(Office of the Secretary of Family and Social Services; 405 IAC 8-9-9)

405 IAC 8-9-10 Agency record; judicial review

Authority: IC 12-10-16-5
Affected: IC 4-21.5-3-33; IC 4-21.5-5; IC 12-10-16

Sec. 10. (a) The record of the administrative proceedings shall be that as defined in IC 4-21.5-3-33.

(b) If the appellant is not satisfied with the secretary's final action after agency review, he or she may file for judicial review in accordance with IC 4-21.5-5.

(c) The appellant is required to seek agency review before filing a petition for judicial review. *(Office of the Secretary of Family and Social Services; 405 IAC 8-9-10)*

Rule 10. Contracts with Part D Plans

405 IAC 8-10-1 General provisions

Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. (a) The IPDP may contract with Medicare Part D plans to administer state Medicare Part D assistance. Only Medicare Part D plans offering standard coverage that have a monthly premium at or below the low-income subsidy premium amount may contract with the IPDP.

(b) Medicare Part D plans contracting with the IPDP to administer state Medicare Part D assistance may place an IPDP logo on joint IPDP and PDP member prescription drug cards, if approved by the program, and shall do the following:

(1) Accept electronic auto-enrollment records in a standard defined by the IPDP.

(2) Administer the IPDP Medicare Part D assistance program. Per member expenses shall not exceed two hundred fifty dollars ($250) in a calendar year, or other period of eligibility defined by the IPDP.

(3) Communicate IPDP assistance to the Centers for Medicare and Medicaid Services true out-of-pocket facilitator to apply towards members' true out-of-pocket expenses.

(4) Provide IPDP with claims data on IPDP members:

(A) in order for the IPDP to understand the utilization underlying its costs; and

(B) for reconciliation of incurred and paid amounts.

(5) Comply with all federal regulations pertaining to Medicare Part D plans as outlined in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(Office of the Secretary of Family and Social Services; 405 IAC 8-10-1)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 27, 2005 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed new rules concerning the Indiana Prescription Drug Program's wraparound benefit for Medicare Part D plan recipients.

This rule is being implemented to offer a continued benefit to needy elderly Hoosiers who will be enrolled in new Medicare drug plans beginning January 1, 2006.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

E. Mitchell Roob Jr.
Secretary
Office of the Secretary of Family and Social Services

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #05-19

DIGEST

Adds 410 IAC 3.6 to establish an authorization and reauthorization process for food vendors and to establish a system of civil penalties and other sanctions for a WIC vendor contract under the WIC program or federal regulations under 7 CFR 246. Effective 30 days after filing with the Secretary of State.

410 IAC 3.6

SECTION 1. 410 IAC 3.6 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3.6. WOMEN, INFANTS, AND CHILDREN PROGRAM RULES, PENALTIES, AND SANCTIONS FOR WIC VENDORS

Rule 1. Definitions

410 IAC 3.6-1-1 Applicability
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 1. The definitions in this rule apply throughout this article. *(Indiana State Department of Health; 410 IAC 3.6-1-1)*

410 IAC 3.6-1-2 "Authorization" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 2. "Authorization" means the process by which the department:
(1) assesses;
(2) selects; and
(3) enters into;
agreements with stores that apply or subsequently reapply to be authorized as WIC vendors. *(Indiana State Department of Health; 410 IAC 3.6-1-2)*

410 IAC 3.6-1-3 "Commodity supplemental food program" or "CSFP" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 3. "Commodity supplemental food program" or "CSFP" means a program of the United States Department of Agriculture that works to improve the health of low-income:
(1) pregnant and breastfeeding women;
(2) new mothers up to one (1) year postpartum;
(3) infants;
(4) children up to six (6) years of age; and
(5) elderly people at least sixty (60) years of age;
by supplementing their diets with nutritious USDA commodity foods. The CSFP provides food and administrative funds to states to supplement the diets of these groups. *(Indiana State Department of Health; 410 IAC 3.6-1-3)*

410 IAC 3.6-1-4 "Conflict of interest" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 4. "Conflict of interest" means a situation in which a private financial interest of:
(1) an officer;
(2) an employee; or
(3) the spouse or unemancipated child;
of a vendor coincides with the private financial interest of a local agency or department employee. *(Indiana State Department of Health; 410 IAC 3.6-1-4)*

410 IAC 3.6-1-5 "Contract brand infant formula" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 5. "Contract brand infant formula" means all infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment contract. If under a single solicitation the manufacturer subcontracts for soy-based infant formula, then all soy-based infant formulas covered by the subcontract are also considered contract brand infant formulas (see 7 CFR 246.16a(c)(1)(i)). If a state agency elects to solicit separate bids for milk-based and soy-based infant formulas, all infant formulas issued under each contract are considered the contract brand infant formula (see 7 CFR 246.16a(c)(1)(ii)). For example, the term includes the following:
(1) All of the milk-based infant formulas issued by a state agency that are produced by the manufacturer that was awarded the milk-based contract.
(2) All of the soy-based infant formulas issued by a state agency that are produced by the manufacturer that was awarded the soy-based contract.
The term also includes all infant formulas (except exempt infant formulas) introduced after the contract is awarded. *(Indiana State Department of Health; 410 IAC 3.6-1-5)*

410 IAC 3.6-1-6 "Controlled substances" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 6. "Controlled substances" means material of a particular kind that is regulated for limited distribution or

use. *(Indiana State Department of Health; 410 IAC 3.6-1-5)*

410 IAC 3.6-1-7 "Department" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 7. "Department" means the Indiana state department of health. *(Indiana State Department of Health; 410 IAC 3.6-1-7)*

410 IAC 3.6-1-8 "Disqualification" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 8. "Disqualification" means the act of ending the WIC program participation of an authorized vendor. *(Indiana State Department of Health; 410 IAC 3.6-1-8)*

410 IAC 3.6-1-9 "Food instrument" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 9. "Food instrument" means:
(1) a voucher;
(2) a check; or
(3) another document;
issued by a local agency that specifies the quantity, size, and type of authorized foods available to a WIC participant within a designated time frame to be used at a WIC vendor. *(Indiana State Department of Health; 410 IAC 3.6-1-9)*

410 IAC 3.6-1-10 "Local agency" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 10. "Local agency" means a:
(1) public or private;
(2) nonprofit; and
(3) health or human;
service agency that provides health services through a contract with the department in accordance with 7 CFR 246.5. *(Indiana State Department of Health; 410 IAC 3.6-1-10)*

410 IAC 3.6-1-11 "Overcharge" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 11. "Overcharge" means a charge of more than one dollar ($1) over the shelf price at the time of the use of the food instrument in question. *(Indiana State Department of Health; 410 IAC 3.6-1-11)*

410 IAC 3.6-1-12 "Participant" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 12. "Participant" means:
(1) a woman who is:
(A) pregnant;
(B) breastfeeding; or
(C) postpartum;
(2) an infant; or
(3) a child;
enrolled in the WIC program. *(Indiana State Department of Health; 410 IAC 3.6-1-12)*

410 IAC 3.6-1-13 "Price comparison analysis" or "PCA" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 13. "Price comparison analysis" or "PCA" means an analysis using the prices of a selection of WIC foods submitted by the store or vendor to determine the relative costs of the store or vendor for comparison purposes. *(Indiana State Department of Health; 410 IAC 3.6-1-13)*

410 IAC 3.6-1-14 "Proxy" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5-6

Sec. 14. "Proxy" means any person designated by a:
(1) woman participant; or
(2) parent or caretaker of an infant or child participant;
to obtain and transact food instruments or to obtain supplemental foods on behalf of a participant. *(Indiana State Department of Health; 410 IAC 3.6-1-14)*

410 IAC 3.6-1-15 "Supplemental foods" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 15. "Supplemental foods" means those foods containing nutrients determined to be beneficial for:
(1) women who are:
(A) pregnant;
(B) breastfeeding; or
(C) postpartum;
(2) infants; and
(3) children;
as prescribed by 7 CFR 246.10. *(Indiana State Department of Health; 410 IAC 3.6-1-15)*

410 IAC 3.6-1-16 "Vendor" defined
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 16. "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one (1) or more stores authorized by the state agency to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity:
(1) constitutes a separate vendor; and
(2) must:
(A) be authorized separately from other stores operated by the business entity; and

(B) have a single, fixed location, except when the authorization of mobile stores is necessary to meet the special needs described in the state agency's state plan in accordance with 7 CFR 246.4(a)(14)(xiv).

(Indiana State Department of Health; 410 IAC 3.6-1-16)

410 IAC 3.6-1-17 "Vendor agreement" defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 17. "Vendor agreement" means a legally binding contract, complying with 7 CFR 246.12(h), between the following:

(1) An authorized vendor.

(2) The WIC program.

The agreement describes the terms and conditions the two (2) parties must follow for the vendor to redeem WIC food instruments. *(Indiana State Department of Health; 410 IAC 3.6-1-17)*

410 IAC 3.6-1-18 "Vendor violation" defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 18. "Vendor violation" means any intentional or unintentional action or omission of a vendor's current:

(1) owners;

(2) officers;

(3) managers;

(4) agents; or

(5) employees;

with or without the knowledge of management, that violates the federal or state statutes, rules, or regulations governing the WIC program. *(Indiana State Department of Health; 410 IAC 3.6-1-18)*

410 IAC 3.6-1-19 "WIC program" defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 19. "WIC program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by section 17 of the Child Nutrition Act of 1966. *(Indiana State Department of Health; 410 IAC 3.6-1-19)*

410 IAC 3.6-1-20 "WIC service area" defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 20. "WIC service area" means an area where local WIC participants could conveniently shop alternative vendors. The term may include a county or marketing area, whichever is determined more appropriate by the department after considering factors including, but not limited to, the following:

(1) Geographic, population, and demographic information.

(2) Information submitted by the store or vendor.

In counties with a population less than seventy-seven thousand (77,000), the service area would generally be the county. In counties with a population greater than seventy-seven thousand (77,000), the service area would generally be an area within five (5) miles of the applicant. *(Indiana State Department of Health; 410 IAC 3.6-1-20)*

Rule 2. General Provisions

410 IAC 3.6-2-1 Application of rules

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 1. This article shall apply to the following:

(1) All stores that apply for participation as vendors in the WIC program.

(2) All vendors contracting with the department or its designees.

(3) Any:

(A) individual;

(B) business entity; or

(C) commercial enterprise;

that accepts or receives food instruments or credit or payment for food instruments, or both.

Any authorization issued before the effective date of this article shall remain valid and shall be subject to this article. *(Indiana State Department of Health; 410 IAC 3.6-2-1)*

410 IAC 3.6-2-2 Vendor selection

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 2. The WIC program must authorize an appropriate number and distribution of vendors in order to ensure the following:

(1) Adequate participant access to supplemental foods.

(2) Effective WIC program:

(A) management;

(B) oversight; and

(C) review;

of its authorized vendors.

In order to accomplish this, vendors and store applicants shall be subject to the vendor selection criteria in 410 IAC 3.6-3-4 and 410 IAC 3.6-3-5. *(Indiana State Department of Health; 410 IAC 3.6-2-2)*

410 IAC 3.6-2-3 Vendor reassessment

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 3. Vendors may be reassessed at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment. The department shall terminate the vendor agreements of vendors that fail to meet the selection criteria. *(Indiana State Department of Health; 410 IAC 3.6-2-3)*

410 IAC 3.6-2-4 Vendor preauthorization visit
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 4. Vendor applicants who have failed a preauthorization visit shall not receive a subsequent preauthorization visit until after they have advised in writing that they can comply with the vendor selection criteria. *(Indiana State Department of Health; 410 IAC 3.6-2-4)*

410 IAC 3.6-2-5 Expiration of vendor agreement
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 5. If the vendor wishes to continue to be authorized beyond the period of its current vendor agreement, the vendor must apply for reauthorization. *(Indiana State Department of Health; 410 IAC 3.6-2-5)*

410 IAC 3.6-2-6 Vendor agreement
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 6. All stores authorized as a vendor by the department shall do the following:
(1) Sign a vendor agreement prescribed by the department in accordance with 7 CFR 246.12(h).
(2) Agree to comply with all applicable federal and state laws and rules, including, but not limited to, 42 U.S.C. 1786 and 7 CFR 246.
(Indiana State Department of Health; 410 IAC 3.6-2-6)

410 IAC 3.6-2-7 Assignment or transfer
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 7. (a) A vendor shall not sell, assign, or transfer the following in any manner:
(1) Its authorization.
(2) The vendor:
(A) agreement;
(B) stamp; or
(C) number.
Any actual or attempted sale, assignment, or transfer of the authorization, vendor agreement, vendor stamp, or vendor number shall result in termination of the vendor agreement. Relocation of less than one (1) mile is not a violation of this section.

(b) At least fifteen (15) calendar days in advance, the vendor shall notify the department of the following:
(1) Any:
(A) sale;
(B) lease;
(C) bankruptcy; or
(D) cessation;
of the vendor's business entity.
(2) Any sale of a majority interest in the vendor's:
(A) corporation;
(B) partnership;
(C) sole proprietorship; or
(D) business entity.
The notification shall be sent by certified mail and in writing to the director of the Indiana state WIC program, Indiana state department of health. *(Indiana State Department of Health; 410 IAC 3.6-2-7)*

410 IAC 3.6-2-8 Voluntary withdrawal from the WIC program
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 4-21.5; IC 16-35-1.5

Sec. 8. A vendor may voluntarily withdraw from participation in the WIC program. The department, however, shall not accept voluntary withdrawal as an alternative to an order of disqualification for which no appeal is pending under IC 4-21.5. If, at the time of the withdrawal, the vendor owes:
(1) a fine assessment; or
(2) any other monies resulting from a sanction;
the fine assessment and any other monies due shall be paid in full. *(Indiana State Department of Health; 410 IAC 3.6-2-8)*

Rule 3. Selection of Vendors

410 IAC 3.6-3-1 Authorization of vendors
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 1. (a) A store becomes a vendor when authorized in accordance with this rule.

(b) Once every three (3) years, the department shall conduct an open authorization period to select vendors. The open authorization period shall:
(1) begin April 12; and
(2) end May 11.
The contract for vendors authorized during this open authorization period begins on October 1.

(c) The WIC program shall send an application for authorization to a store's representative who has contacted the department in writing to request an application for authorization. The store seeking authorization as a vendor shall do the following:
(1) Complete the application for authorization.
(2) Return it to the WIC program before the end of the open authorization period.
Current vendors will receive an application from the WIC program in order to apply for reauthorization. Incomplete applications will be returned to the store's representative and must be returned within fifteen (15) days from the end of the open enrollment period to be considered timely.

(d) A store wishing to become a vendor outside the open

authorization period must meet the requirements of section 10 of this rule. *(Indiana State Department of Health; 410 IAC 3.6-3-1)*

410 IAC 3.6-3-2 Authorization process for stores not currently authorized

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 2. (a) A store must submit a WIC food vendor application to be considered for authorization.

(b) Applications received during the open authorization period shall be reviewed using the selection criteria in section 3 of this rule. Applications that:

(1) meet all criteria in section 4 of this rule; and

(2) successfully pass the preauthorization visit;

will be offered a vendor agreement. *(Indiana State Department of Health; 410 IAC 3.6-3-2)*

410 IAC 3.6-3-3 Reauthorization process for currently authorized vendors

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 3. (a) A vendor must submit a WIC food vendor application to be considered for reauthorization.

(b) Applications received during the open authorization period shall be reviewed using the selection criteria in sections 4 and 5 of this rule. Currently authorized vendors:

(1) that meet all criteria in sections 4 and 5 of this rule will be offered a vendor agreement; and

(2) shall not receive a preauthorization visit.

(Indiana State Department of Health; 410 IAC 3.6-3-3)

410 IAC 3.6-3-4 Selection criteria for initial authorization

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 4. Only stores meeting all of the following criteria, and having a total number of points assigned, under section 6 of this rule, greater than or equal to the lowest point total of vendors applying in the same WIC service area, will be selected for a preauthorization visit:

(1) The store shall be as follows:

(A) Located:

(i) within this state; or

(ii) in a county contiguous to the Indiana border.

(B) Open for business and able to serve WIC participants at least eight (8) hours per day, six (6) days per week.

(C) Located in a permanent, fixed location where participants may purchase allowable foods with their food instruments.

(2) The store may not be currently disqualified from either of the following:

(A) Participation in the food stamp program or have been assessed a civil money penalty in lieu of a disqualification from the food stamp program that, had it been imposed, would not yet have expired.

(B) The WIC program.

The disqualifications in this subdivision must be final with no appeal pending.

(3) None of the store's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for the following conduct demonstrating a lack of business integrity:

(A) Fraud.

(B) Antitrust violations.

(C) Embezzlement.

(D) Theft.

(E) Forgery.

(F) Bribery.

(G) Falsification or destruction of records.

(H) Making false statements.

(I) Receiving stolen property.

(J) Making false claims.

(K) Obstruction of justice.

(4) The store shall:

(A) meet the minimum stock requirements of section 8 of this rule; and

(B) not have redeemed or attempted to redeem food instruments without being authorized as a WIC vendor.

(5) Pharmacies or vendors with a pharmacy must be able to provide any WIC prescribed formula within two (2) working days of the request by a WIC participant unless the failure to provide the WIC prescribed formula is the result of any of the following:

(A) A natural disaster.

(B) Actions or decrees of governmental bodies.

(C) A communication line failure.

(D) Extraordinary circumstances beyond the control of the vendor.

(6) The store must purchase WIC formula from a source on the:

(A) department's list; or

(B) list of another state WIC agency;

pursuant to Section 203(e)(8) of the Child Nutrition and WIC Reauthorization Act of 2004, P.L.108-265.

(7) No conflict of interest shall exist between:

(A) the store; and

(B) any local agency or department employee.

(8) The store:

(A) shall not have attempted to circumvent disqualification from the WIC program through ownership change; and

(B) must:

(i) participate in the food stamp program; and

(ii) have a food stamp number;

unless the store is a pharmacy only.

(Indiana State Department of Health; 410 IAC 3.6-3-4)

410 IAC 3.6-3-5 Selection criteria for reauthorization
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 5. In addition to the criteria in section 4 of this rule, a vendor seeking reauthorization must also meet the following criteria and have been assigned at least two (2) points under section 6 of this rule:

(1) The vendor shall:

(A) redeem at least:

(i) forty (40) food instruments per month and a minimum of one percent (1%) of the food instruments in the county; or

(ii) one hundred fifty (150) food instruments per month for the immediately preceding six (6) months of food instrument redemption data;

(B) have implemented all required corrective actions resulting from monitoring by the department, including reimbursement of any overcharges or overpayments; and

(C) be in compliance with the applicable federal and state regulations.

(2) The store shall not have provided refunds, or permit exchanges for foods purchased with food instruments, except for exchanges of an identical authorized food item when the original food item:

(A) is defective;

(B) is spoiled; or

(C) has exceeded:

(i) its "sell by" date;

(ii) its "best if used by" date; or

(iii) another date;

limiting the sale or use of the item.

"Identical food item" means the exact brand and size of the original food item purchased. Participants may only exchange WIC items with a receipt.

(Indiana State Department of Health; 410 IAC 3.6-3-5)

410 IAC 3.6-3-6 Application points
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 6. The department will assign points for the categories listed in this section as part of the authorization process. Points will be assigned to applications as follows:

(1) Low price comparison average (PCA). A store that has a PCA that is one percent (1%) to ten percent (10%) below the average price of vendors in the same WIC service area is awarded one (1) point. Any store that has a PCA more than ten percent (10%) below the average is awarded two (2) points.

(2) A store with a pharmacy will be awarded one (1) point if the WIC service area is without a WIC authorized pharmacy.

(3) A store that has at least fifty percent (50%) sales from food sales will be awarded one (1) point.

(4) Current authorized vendors who have:

(A) not received a second education/warning letter; or

(B) been required to attend a conference;

under 410 IAC 3.6-5-2(c)(3) in the last two (2) years will be awarded one (1) point.

(5) A store that has not accumulated enough points to be authorized, but is needed to avoid inadequate participant access under section 9 of this rule, will be awarded one (1) point.

(Indiana State Department of Health; 410 IAC 3.6-3-6)

410 IAC 3.6-3-7 Preauthorization visit
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 7. (a) If the store's application for authorization meets all criteria in section 4 of this rule, the local agency shall conduct a preauthorization visit of the store to determine compliance with the following:

(1) All WIC food prices are marked on or near the foods.

(2) WIC food prices submitted on the application match the store's shelf prices.

(3) Minimum stocking requirements of section 8 of this rule are met.

(4) WIC foods on the shelves available for sale are within their fresh date.

(5) WIC foods are stored and refrigerated in compliance with 410 IAC 7-24.

(b) The local agency shall do the following:

(1) Conduct the preauthorization visit.

(2) Forward the results to the department to do the following:

(A) Complete the review.

(B) Render a decision on the store's application.

(Indiana State Department of Health; 410 IAC 3.6-3-7)

410 IAC 3.6-3-8 Minimum stock
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 8. (a) In order to ensure adequate participant access to supplemental foods, the following minimum stock shall be available on the shelf or in stock:

(1) Contract brand infant formula as follows:

(A) Thirty-two (32) thirteen (13) ounce cans of each of the following:

(i) Enfamil LIPIL with iron concentrate.

(ii) Enfamil Prosobee LIPIL iron fortified concentrate.

(B) Twenty (20) twelve and nine-tenths (12.9) ounce cans of Enfamil LIPIL with iron powder.

(C) Ten (10) twelve and nine-tenths (12.9) ounce cans of Enfamil Prosobee LIPIL iron fortified powder.

(2) One hundred percent (100%) dairy milk: fifteen (15) gallons total of:
(A) whole;
(B) low fat; and
(C) skim;
milk in gallons.
(3) Cheese:
(A) three (3) kinds; and
(B) five (5) pounds;
of domestic prepackaged blocks or sliced cheese.
(4) Eggs: five (5) dozen large white eggs in one (1) dozen containers.
(5) One hundred percent (100%) juice:
(A) thirty (30) forty-six (46) ounce containers, at least four (4) kinds; and
(B) thirty (30) cans of eleven and five-tenths (11.5) or twelve (12) ounce frozen juice or shelf stable concentrate, or both, at least two (2) kinds.
(6) Cereal:
(A) six (6) kinds of dry; and
(B) one (1) kind of cooked;
cereal, for a total of twenty (20) boxes.
(7) Peanut butter: five (5) eighteen (18) ounce jars.
(8) Dried beans, peas, and lentils: three (3) kinds for a total of five (5) pounds in one (1) pound bags.
(9) Infant cereal:
(A) fifteen (15) boxes; and
(B) three (3) kinds;
of eight (8) ounce dry infant cereal without fruit.
(10) One hundred percent (100%) infant juice: six (6), thirty-two (32) ounce bottles.

(b) Noncompliance with this section will not result in an enforcement action if the vendor can demonstrate that any failure to meet the requirements of subsection (a) was the result of any of the following:
(1) A natural disaster.
(2) Actions or decrees of governmental bodies.
(3) A communication line failure.
(4) Extraordinary circumstances beyond the control of the vendor.

(c) The department will provide at least one (1) month written notice of any change in the contract brand infant formula. *(Indiana State Department of Health; 410 IAC 3.6-3-8)*

410 IAC 3.6-3-9 Inadequate participant access
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 9. (a) The department may consider whether there is inadequate participant access when considering whether to grant or deny authorization or reauthorization.

(b) The department shall also consider whether there is inadequate participant access when deciding whether to impose a civil money penalty in lieu of disqualification under 410 IAC 3.6-4.

(c) There is inadequate participant access if:
(1) a vendor:
(A) has closed, withdrawn, or relocated farther than one (1) mile from its authorized location; and
(B) was redeeming more than forty (40) food instruments per month and one percent (1%) of the county's food instruments or one hundred fifty (150) food instruments per month with no minimum percentage;
(2) a pharmacy vendor has closed, withdrawn, or relocated farther than one (1) mile from its authorized location;
(3) a vendor:
(A) has been disqualified for at least one (1) year in the WIC service area; and
(B) was redeeming more than forty (40) food instruments per month and one percent (1%) of the county's food instruments or one hundred fifty (150) food instruments per month with no minimum percentage;
(4) the number of food instruments redeemed in the WIC service area has increased by ten percent (10%) in the preceding quarter; or
(5) there is a hardship for a significant WIC population in an area that is not served by an authorized vendor.
(Indiana State Department of Health; 410 IAC 3.6-3-9)

410 IAC 3.6-3-10 Store application outside the open authorization period
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 10. (a) A store must submit a WIC food vendor application to be considered for authorization.

(b) Applications received outside the open authorization period shall be reviewed to determine if there is inadequate participant access.

(c) If the department determines that there is not inadequate participant access:
(1) the store will be notified in writing of that determination; and
(2) the application will be denied.

(d) If the department determines that there is inadequate participant access, the following will occur:
(1) The application will be reviewed using the selection criteria in section 5 of this rule.
(2) If the application:
(A) meets all criteria in section 4 of this rule; and
(B) successfully passes the preauthorization visit;
the store will be offered a vendor agreement.
(Indiana State Department of Health; 410 IAC 3.6-3-10)

410 IAC 3.6-3-11 Denial of authorization
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 4-21.5; IC 16-19-3-5

Sec. 11. (a) The department shall deny the application of a store or vendor if the selection criteria in either section 4 or 5 of this rule, or both, are not met unless the department determines there is inadequate participant access. The department will do the following:
(1) Notify the vendor in writing of the denial.
(2) Inform them of their appeal rights under IC 4-21.5.

(b) The department shall deny reauthorization if the vendor is not meeting the minimum food instrument redemption criteria in section 6(1) of this rule unless the department determines there is inadequate participant access.

(c) The department shall deny the application of a store or vendor if it contains false information.

(d) The department shall deny authorization for either of the following reasons:
(1) If:
(A) the vendor has been disqualified from the WIC program; and
(B) no appeals are pending.
(2) If the department determines that the store:
(A) relocated; or
(B) effected a change of ownership;
to avoid a disqualification.
(Indiana State Department of Health; 410 IAC 3.6-3-11)

410 IAC 3.6-3-12 Termination of authorized WIC vendors
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 12. The department shall terminate a WIC vendor's authorization if any of the following occur:
(1) The store has been disqualified under 410 IAC 3.6-4 or 410 IAC 3.6-5.
(2) The WIC vendor supplied false information in their application for authorization or reauthorization.
(3) The store is not redeeming at least forty (40) food instruments per month by the sixth month of their authorization or reauthorization, unless the department determines that termination of the WIC vendor would cause inadequate participant access as described in section 9 of this rule.
(4) Ownership of the store changes.
(5) The store:
(A) relocates in excess of one (1) mile of its current location; or
(B) closes for more than three (3) consecutive business days and does not notify the department, unless the department determines that termination of the WIC vendor would cause inadequate participant access as described in section 9 of this rule.
(Indiana State Department of Health; 410 IAC 3.6-3-12)

Rule 4. Federally-Mandated WIC Vendor Sanctions

410 IAC 3.6-4-1 Permanent disqualifications
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 1. (a) The department shall permanently disqualify a WIC vendor convicted of either of the following:
(1) Trafficking in food instruments.
(2) Selling:
(A) firearms;
(B) ammunition;
(C) explosives; or
(D) controlled substances, as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802);
in exchange for food instruments.

(b) A WIC vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

(c) The department may impose a civil money penalty in lieu of a disqualification for this violation when the department determines that:
(1) disqualification of the WIC vendor would result in inadequate participant access; or
(2) the WIC vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking, and the ownership of the WIC vendor:
(A) was not aware of;
(B) did not approve of; and
(C) was not involved in;
the conduct of the violation.
(Indiana State Department of Health; 410 IAC 3.6-4-1)

410 IAC 3.6-4-2 Six-year disqualifications
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 2. The department shall disqualify a WIC vendor for six (6) years for one (1) incidence of either of the following:
(1) Buying or selling food instruments for cash (trafficking).
(2) Selling:
(A) firearms;
(B) ammunition;
(C) explosives; or
(D) controlled substances, as defined in 21 U.S.C. 802;
in exchange for food instruments.
(Indiana State Department of Health; 410 IAC 3.6-4-2)

410 IAC 3.6-4-3 Three-year disqualifications
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 3. The department shall disqualify a WIC vendor for

three (3) years for any of the following reasons:
(1) One (1) incidence of the sale of:
(A) alcohol;
(B) alcoholic beverages; or
(C) tobacco products;
in exchange for food instruments.
(2) A pattern of any of the following:
(A) Two (2) or more claims for reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store's documented inventory of that supplemental food item within a twenty-four (24) month period.
(B) Three (3) or more vendor overcharges within a twenty-four (24) month period.
(C) Two (2) or more instances of any combination of receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person, or both, within a twenty-four (24) month period.
(D) Three (3) or more charges for supplemental food not received by the participant within a twenty-four (24) month period.
(E) Two (2) or more instances of providing credit or nonfood items, other than:
(i) alcohol;
(ii) alcoholic beverages;
(iii) tobacco products;
(iv) cash;
(v) firearms;
(vi) ammunition;
(vii) explosives; or
(viii) controlled substances, as defined in 21 U.S.C. 802;
in exchange for food instruments within a twenty-four (24) month period.
(Indiana State Department of Health; 410 IAC 3.6-4-3)

410 IAC 3.6-4-4 One-year disqualifications
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 4. The department shall disqualify a vendor for one (1) year for a pattern of two (2) or more instances, within a twenty-four (24) month period, of providing unauthorized food items in exchange for food instruments, including charging for supplemental foods provided in excess of those listed on the food instrument. *(Indiana State Department of Health; 410 IAC 3.6-4-4)*

410 IAC 3.6-4-5 Second mandatory sanctions
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 5. When a vendor, who previously has been assessed a sanction for a:
(1) six-year;
(2) three-year; or
(3) one-year;
disqualification, receives another sanction for any of these violations, the department shall double the second sanction. Civil money penalties may only be doubled up to the limits allowed under 7 CFR 246.12(l)(2)(i). *(Indiana State Department of Health; 410 IAC 3.6-4-5)*

410 IAC 3.6-4-6 Third or subsequent mandatory sanction
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 6. When a WIC vendor, who previously has been assessed two (2) or more sanctions for a:
(1) six-year;
(2) three-year; or
(3) one-year;
disqualification, receives another sanction for any of these violations, the department shall double the third sanction and all subsequent sanctions. The department shall not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed for a six-year disqualification, three-year disqualification, or one-year disqualification. *(Indiana State Department of Health; 410 IAC 3.6-4-6)*

410 IAC 3.6-4-7 Disqualification based on another food program disqualification
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 7. The department shall disqualify a WIC vendor who has been disqualified from the food stamp program. The disqualification:
(1) shall be for the same length of time as the food stamp program disqualification;
(2) may begin at a later date than the food stamp program disqualification; and
(3) shall not be subject to administrative or judicial review under the WIC program.
(Indiana State Department of Health; 410 IAC 3.6-4-7)

410 IAC 3.6-4-8 Inadequate participant access determinations for federally-mandated vendor disqualification
Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 8. Before disqualifying a vendor for a food stamp program disqualification or for any of the violations listed for a federally-mandated six-year disqualification, three-year disqualification, or one-year disqualification, the department shall determine if disqualification of the WIC vendor would result in inadequate participant access. If the department determines that disqualification of the WIC vendor would result in inadequate participant access, the

department shall impose a civil money penalty in lieu of disqualification. However, the department shall not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations listed for a:

(1) six-year;

(2) three-year; or

(3) one-year;

disqualification. *(Indiana State Department of Health; 410 IAC 3.6-4-8)*

410 IAC 3.6-4-9 Civil money penalty formula

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 9. (a) For each violation subject to a federally-mandated sanction, the department shall take the following steps to calculate a civil money penalty imposed in lieu of disqualification:

(1) Determine the vendor's average monthly redemption of food instruments for the six (6) month period ending with the month immediately preceding the month during which the notice of adverse action is dated.

(2) Multiply the average monthly redemption amount determined in subdivision (1) by ten percent (10%).

(3) Multiply the product from subdivisions (1) and (2) by the number of months for which the vendor would have been disqualified. This is the amount of the civil money penalty, provided that the civil money penalty shall not exceed the limits set forth in 7 CFR 246.12(l)(2)(i). For a violation that warrants permanent disqualification, the amount of the civil money penalty shall not exceed the limits set forth in 7 CFR 246.12(l)(2)(i). When during the course of an investigation the department determines a vendor has committed multiple violations, the department shall impose a civil money penalty for each violation.

(b) The total amount of civil money penalties imposed for violations investigated as part of a single investigation may not exceed the limits set in 7 CFR 246.12(l)(2)(i). *(Indiana State Department of Health; 410 IAC 3.6-4-9)*

410 IAC 3.6-4-10 Multiple violations during an investigation

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 10. When during the course of an investigation the department determines a vendor has committed multiple violations of this rule, the department shall disqualify the vendor for the period corresponding to the most serious violation of this rule. However, the department shall include all violations in the notice of adverse action. *(Indiana State Department of Health; 410 IAC 3.6-4-10)*

Rule 5. Department Sanctions

410 IAC 3.6-5-1 Compliance

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 1. The purpose of the WIC program is to provide the following:

(1) Supplemental foods containing nutrients determined beneficial for:

(A) pregnant, breastfeeding, and postpartum women;

(B) infants; and

(C) children;

who are at nutritional risk.

(2) Nutritional education to eligible persons.

The WIC vendor is an important part of the WIC program. The primary focus of the WIC program is not to sanction WIC vendors. The department will emphasize compliance with this rule while taking into account the circumstances of the noncompliance with this rule. Sanctions will be imposed when necessary to ensure compliance. *(Indiana State Department of Health; 410 IAC 3.6-5-1)*

410 IAC 3.6-5-2 Major and minor violations

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 2. (a) Major violations are violations that could result in harm to WIC participants or the WIC program. The following are major violations:

(1) Claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the vendor's documented inventory of that supplemental food item for a specific period of time.

(2) Submission of false information:

(A) on the retail vendor price survey; or

(B) during the course of inspections of the vendor site.

(3) Receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person, or both.

(4) Charging for a supplemental food not received by the participant.

(5) Providing credit or nonfood items, other than:

(A) alcohol;

(B) alcoholic beverages;

(C) tobacco products;

(D) cash;

(E) firearms;

(F) ammunition;

(G) explosives; or

(H) controlled substances, as defined in 21 U.S.C. 802;

in exchange for food instruments.

(6) Failure to attend a required training.

(7) Failure to maintain:

(A) inventory records; or

(B) other records;

the department requires of the vendor.

(8) Providing change when redeeming a food instrument.

(9) Failure to provide authorized WIC program personnel access to the following:
(A) The business premises.
(B) Any redeemed food instruments on hand.
(C) Any other records pertaining to vendor participation.
(10) Alteration of a food instrument other than a legitimate price or "date used" correction.
(11) Home delivery of WIC purchases.
(12) Failure to accept a valid food instrument when accompanied by a valid WIC identification folder.
(13) Recovery or attempted recovery of funds or food from WIC participants.
(14) Failure of a vendor pharmacy to provide special formulas as required by 410 IAC 3.6-3-4(a)(9).
(15) Failure to compare the signature on the food instrument with the signature on the WIC program identification card.
(16) Not allowing WIC participants to participate in sales promotions or manufacturer's specials or refusal to accept coupons when allowed for other customers.
(17) Denial of the purchase of up to the full amount of WIC foods authorized on a food instrument if requested by a WIC participant.
(18) Selling expired infant formula to participants.
(19) Failure to reimburse the department, within thirty (30) days of written request, for amounts paid by the department to the vendor on improperly redeemed food instruments.
(20) Including sales tax or container deposits as part of the actual cost of the authorized food listed on the food instrument or requiring the participant to pay the sales tax or container deposit.
(21) Requiring cash purchases in order to redeem food instruments.
(22) Accepting the return of items purchased with a food instrument for cash or credit towards other purchases or exchanges, with the exception of exchanges of an identical authorized food item when the original food item:
(A) is defective;
(B) is spoiled; or
(C) has exceeded its:
(i) "sell by" date;
(ii) "best if used by" date; or
(iii) another date;
limiting the sale or use of the item.
(23) Threatening or verbally abusing WIC participants or authorized WIC program personnel.

(b) Minor violations are violations that may impose less harm to participants or the program. The following are minor violations:
(1) Failure to supply a timely retail vendor price survey to the department.
(2) Requiring WIC participants to show identification other than WIC identification folders, except in cases when the WIC identification folder is not signed.
(3) Issuing rain checks for specific WIC food types, brand, or quantities listed on the food instrument not available or not received by the participant at the time a food instrument is redeemed.
(4) Failure to maintain the minimum required:
(A) quantity;
(B) size;
(C) type; and
(D) variety;
of WIC-approved foods as set forth in 410 IAC 3.6-3-8.
(5) Requiring a participant to select a specific type or brand of WIC-approved foods when the food instrument or the food list, or both, does not require the purchase of that specific type or brand.
(6) The:
(A) possession;
(B) display on the shelf in the vendor site;
(C) attempted sale; or
(D) actual sale;
of food products that originated from the Commodity Supplemental Food Program.
(7) Acceptance of food instruments that are signed by a participant or a proxy before the vendor fills in the total actual cost.
(8) Failure to remove out-of-date WIC foods from customer areas.
(9) Failure of the WIC foods identification test by store personnel or scanner system.
(10) Failure to do any of the following:
(A) Maintain WIC food prices within fifteen percent (15%) of other authorized WIC vendors in the WIC service area.
(B) Accurately show the price of WIC foods on the food:
(i) package;
(ii) container;
(iii) shelf; or
(iv) sign.
(C) Offer WIC participants the same courtesies and services offered to the general public.
(11) Using a cash register without a current WIC-approved food list at the cash register.
(12) Failure to allow the purchase of a WIC authorized food.
(13) Accepting a food instrument:
(A) before the "first day to use"; or
(B) after the "last day to use".
(14) Accepting an altered food instrument, other than a legitimate price or "date used" correction.
(15) Failure to provide a WIC participant with a cash register receipt for foods purchased with a food instrument.
(16) Retaining WIC identification or any information that

identifies a person as a WIC participant or proxy or disclosing information regarding a participant of the WIC program to any person without a valid court order, other than to the department, its designee, or a federal WIC program official.

(c) Sanctions will be imposed as follows:

(1) For each major violation, a vendor may be fined as follows:

(A) Up to the lesser of one thousand dollars ($1,000) or ten percent (10%) of the vendor's monthly average redemptions for:

(i) the greater of the twelve (12) months preceding the date of the sanction notice; or

(ii) a lesser number of months the vendor has been authorized.

(B) Disqualification from the WIC program for up to one (1) year.

(2) For the first minor violation within a twenty-four (24) month period, the vendor shall receive a letter of education indicating the following:

(A) The violation.

(B) How to remedy the violation.

(3) For a vendor's second minor violation within a twenty-four (24) month period, a vendor shall either:

(A) receive a second education/warning letter; or

(B) be required to participate in a conference with the department and local agency about the violation, either in person or by telephone.

After the letter or conference, the vendor shall submit written documentation of the corrective action that will be taken.

(4) For a vendor's third minor violation within a twenty-four (24) month period, a vendor may be fined up to the lesser of three hundred dollars ($300) or three percent (3%) of the vendor's monthly average redemptions for the greater of the following:

(A) The twelve (12) months preceding the date of the imposition of the sanction.

(B) A lesser number of months the vendor has been authorized.

(5) For any subsequent minor violations within a twenty-four (24) month period, a vendor may be fined up to the lesser of five hundred dollars ($500) or five percent (5%) of the vendor's monthly average redemptions for the greater of the following:

(A) The twelve (12) months preceding the date of the sanction notice.

(B) A lesser number of months the vendor has been authorized.

(6) Multiple violations found may result in a cumulative penalty assessment based upon (c)(2) above *[sic.]***.**

(7) The maximum fine and maximum disqualification term shall be not more than the limits set forth in 7 CFR 246.12(l)(2)(i).

(d) A vendor remaining in the program after an imposed sanction shall provide the following:

(1) Certification that the situation giving rise to the sanction has been corrected.

(2) Documentation regarding the correction as requested by the department.

(Indiana State Department of Health; 410 IAC 3.6-5-2)

410 IAC 3.6-5-3 Prior warning

Authority: IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 3. The department does not have to provide the vendor with a prior warning that violations were occurring before imposing any of the sanctions in this article, with the exception of section 2(c) of this rule. *(Indiana State Department of Health; 410 IAC 3.6-5-3)*

410 IAC 3.6-5-4 General requirements

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 4. The total period of disqualification imposed for department sanctions investigated as part of a single investigation may not exceed one (1) year. A civil money penalty or fine may not exceed eleven thousand dollars ($11,000) for each violation. The total amount of civil money penalties and administrative fines imposed for violations investigated as part of an investigation may not exceed the limits set forth in 7 CFR 246.12(l)(2)(i). *(Indiana State Department of Health; 410 IAC 3.6-5-4)*

410 IAC 3.6-5-5 Administrative reviews

Authority: IC 16-19-3-4; IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 4-21.5; IC 16-19-3; IC 16-35-1.5

Sec. 5. The department shall provide administrative review to the extent required by IC 4-21.5, except that administrative review will not be provided for certain department actions as indicated in 7 CFR 246.18(a)(1)(iii). *(Indiana State Department of Health; 410 IAC 3.6-5-5)*

410 IAC 3.6-5-6 Termination of agreement

Authority: IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 6. When the department disqualifies a vendor, the department shall also terminate the vendor agreement. *(Indiana State Department of Health; 410 IAC 3.6-5-6)*

Rule 6. Incorporation by Reference

410 IAC 3.6-6-1 Incorporation by reference

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 1. (a) When used in this article, references to the following publications shall mean the version of that

publication listed in this subsection. The following publications are hereby incorporated by reference:

(1) 7 CFR 246.12 (January 1, 2006).
(2) 42 U.S.C. 1786.
(3) 7 CFR 246.10 (January 1, 2006).
(4) 7 CFR 246.18 (January 1, 2006).
(5) 21 U.S.C. 802.

(b) Federal rules that have been incorporated by reference do not include any later amendments than those specified in the incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. *(Indiana State Department of Health; 410 IAC 3.6-6-1)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 22, 2005 at 10:00 a.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on a proposed new rule to establish an authorization and reauthorization process for food vendors and to establish a system of civil penalties and other sanctions for a WIC vendor contract under the WIC program or federal regulations under 7 CFR 246.

United States Department of Agriculture regulations require the Indiana State Department of Health to adopt criteria for the selection of WIC vendors. The Indiana State Department of Health has included the criteria and process for selection of vendors in this rule.

Copies of these rules are now on file at the Community and Family Health Services Commission at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sue Uhl
Deputy State Health Commissioner
Indiana State Department of Health

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

Proposed Rule
LSA Document #05-128

DIGEST

Amends 646 IAC 3-10-9 and 646 IAC 3-10-13 to allow the Department of Workforce Development flexibility in how unemployment benefits are paid to recipients and to allow the Department of Workforce Development to use debit cards, direct deposit, or any means the Department of Workforce Development deems to be in its best interests and in the interests of the recipient to deliver unemployment benefits. *NOTE: LSA Document #05-128, printed at 28 IR 3343, was resubmitted for publication.* Effective 30 days after filing with the Secretary of State.

646 IAC 3-10-9
646 IAC 3-10-13

SECTION 1. 646 IAC 3-10-9 IS AMENDED TO READ AS FOLLOWS:

646 IAC 3-10-9 Payment of benefits
Authority: IC 22-4.1-3-3
Affected: IC 22-4-12-1; IC 22-4.1

Sec. 9. Benefits shall be paid by ~~warrant from the central office of~~ **debit card, direct deposit, or other means as** the department **deems to be** in ~~Indianapolis, Indiana.~~ **its best interests and in the interests of the eligible individual.** Except as otherwise provided under ~~section 15~~ **section 13** of this rule, ~~warrants~~ **benefits** shall be:

(1) payable to the eligible individual; and ~~shall be mailed~~

(2) delivered directly to him or her ~~or delivered~~ as the ~~director~~ **department** may designate.

(Department of Workforce Development; Reg 812; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 928; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 46; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1931; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2857; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-11) to the Department of Workforce Development (646 IAC 3-10-9) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 2. 646 IAC 3-10-13 IS AMENDED TO READ AS FOLLOWS:

646 IAC 3-10-13 Benefits due deceased claimants; payment to estate or heirs
Authority: IC 22-4.1-3-3
Affected: IC 22-4.1

Sec. 13. (a) Benefits due and payable to a deceased applicant shall be paid to the executor, administrator, or next-of-kin of the deceased if, ~~prior to~~ **before** his **or her** death, the decedent had executed a voucher for the benefits claimed. If there is an executor or administrator, payments must be made to the executor or administrator. If it is shown to the satisfaction of the director that there is no executor, ~~and~~ no administrator has been appointed, and in all probability no administrator will be appointed, payment may be made to the next-of-kin, due regard being given to the following order of preference:

(1) The surviving spouse.
(2) Children.
(3) Parents.
(4) Brothers and sisters.
(5) Other relatives.

(b) The ~~director,~~ **commissioner,** however, is not bound to follow ~~this~~ **the** order of preference **listed in subsection (a).**

(c) Whenever there is more than one (1) legal heir in any of the classes established in subsection (a), payment may be made to any one (1) of that group as agent for the others upon submission of proper evidence of authority and identification.

(d) Application for payment of such benefits must be:
(1) made in writing; and
(2) on the prescribed form;
within six (6) months after the death of the decedent; provided, that the department, upon good cause shown, may extend the time for filing. ~~The warrant or warrants representing benefits claimed must accompany the application for payment.~~ Upon approval of the application, ~~the warrant or warrants~~ **payments** shall be ~~cross-endorsed~~ **made under section 9 of this rule** to ~~the order of~~ the person entitled to receive the payment. *(Department of Workforce Development; Reg 816; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 930; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1933; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-15) to the Department of Workforce Development (646 IAC 3-10-13) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 6, 2006 at 8:00 a.m., at the Department of Workforce Development, 10 North Senate Avenue, Room 301A, Indianapolis, Indiana the Department of Workforce Development will hold a public hearing on proposed amendments to 646 IAC 3-10-9 and 646 IAC 3-10-13 to broaden the means by which unemployment benefits may be paid out to eligible claimants.

These changes will not add any additional costs to small businesses. These proposed rules do not impose any requirements or costs on a regulated entity not expressly required by state or federal law.

Copies of these rules are now on file at 10 North Senate Avenue, Room SE202 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Ron Stiver
Commissioner
Department of Workforce Development

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

Proposed Rule
LSA Document #05-225

DIGEST

Adds 646 IAC 3-4-12 because Senate Enrolled Act 612 voided 646 IAC 3-4-10 and requires the Department to adopt rules explaining how transfers of a portion of a trade or business are affected by this new law enacted to prevent unemployment insurance tax rate manipulation and requires the Department to establish guidelines to divide, when a transfer of a portion of a trade or business occurs, the experience account balance of a predecessor employer, the payroll of a predecessor employer, and the benefits chargeable to a predecessor employer's original experience account after the date of transfer between the predecessor employer and the successor employer. Amends 646 IAC 3-1-7 to reflect changes created by Senate Enrolled Act 612 regarding unemployment insurance tax rate manipulation. *NOTE: LSA Document #05-225, printed at 29 IR 640, was resubmitted for publication.* Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

These changes will not add any additional costs to small businesses.

646 IAC 3-1-7
646 IAC 3-4-12

SECTION 1. 646 IAC 3-1-7 IS AMENDED TO READ AS FOLLOWS:

646 IAC 3-1-7 Successor employers; notice; transfer of experience account; liability for contributions

Authority: IC 22-4-18-1
Affected: IC 22-4-7-1; IC 22-4-7-2; IC 22-4-9-1; IC 22-4-10-6; IC 22-4-11-2; IC 22-4-11-3; IC 22-4-11.5; IC 22-4.1

Sec. 7. (a) The ~~director~~ **department** is authorized to determine when there has been an acquisition **or transfer** of the organization, trade, or business of an employer within the meaning of IC 22-4-7-2(a), ~~through~~ IC 22-4-7-2(b), ~~and~~ IC 22-4-10-6, **and IC 22-4-11.5.** Each employer who disposes of all or a part of its organization, trade, or business and the ~~successor~~ **acquirer** to that business, or part of that business, shall ~~immediately~~ **within the time prescribed in IC 22-4-10-6(b),** report the transaction to the department and execute prescribed forms. **Except as provided by IC 22-4-11.5,** if the ~~director~~ **department** finds that there has been an acquisition **or transfer** under IC 22-4-7-2(a) by an employing unit not previously an employer within the meaning of IC 22-4-7-1 or IC 22-4-7-2, the:

(1) disposing employer's entire experience account shall be

transferred to the ~~successor~~ **acquirer;** and ~~the successor~~

(2) acquirer shall immediately assume the position of the disposing employer with respect to the resources and liabilities reflected by the experience account as if no change had occurred.

If the ~~director~~ **department** finds that, within the meaning of IC 22-4-7-2(a), there had been an acquisition **or transfer** from an employer by an employer already subject to contribution, the disposing employer's experience account shall be transferred to the ~~successor,~~ **acquirer,** but the ~~successor~~ **acquirer** shall retain its rate of contribution **for the remainder of the calendar year, except as provided by IC 22-4-11.5.** Provided, however, should no reports be received by the ~~director,~~ **department,** then, at the expiration of thirty (30) days from the date of the acquisition **or transfer,** transfer may be made by the ~~director~~ **department** upon ~~his~~ **its** own ~~motion.~~ **initiative.** Whenever a total transfer is made, the status of the ~~original~~ **disposing** employer as an employer under IC 22-4 is terminated unless and until ~~such~~ **the** employer subsequently qualifies under IC 22-4-7-1 or IC 22-4-7-2.

(b) The acquiring employer, if not previously ~~a subject~~ **an** employer **within the meaning of IC 22-4-7-1 or IC 22-4-7-2,** shall, as of the date of acquisition **or transfer,** become liable for contributions with respect to all wages paid to his **or her** own employees during the entire calendar year. **Except as provided by IC 22-4-11.5,** if the acquiring employer:

(1) becomes liable by reason of the acquisition **or transfer;** and

(2) acquires all or part of the ~~predecessor's~~ **disposer's** experience account; ~~it~~

the acquiring employer shall, beginning with the first day of the calendar quarter in which the acquisition occurs, pay contributions at the rate applicable to the ~~predecessor~~ **disposing** employer at the time of the acquisition **or transfer** until its rate is computed for the next succeeding calendar year. Provided, however, that if the ~~successor~~ **acquiring** employer simultaneously acquires all or part of the experience balance of two (2) or more employers, its rate, beginning with the first day of the calendar quarter in which the acquisitions **or transfers** occurred, shall be the highest rate applicable to the experience accounts totally acquired **except as provided by IC 22-4-11.5.** Provided further, that if the ~~successor~~ **acquiring** employer had any employment ~~prior to~~ **before** the date of acquisition upon which contributions were owed under IC 22-4-9-1, its rate of contribution from the first of such year to the first day of the calendar quarter in which the acquisition occurred shall be two and seven-tenths percent (2.7%). If ~~such~~ **the** employer becomes liable by reason of an acquisition within the meaning of IC 22-4-7-2(b), ~~and does not acquire a part of the~~ **it must receive a portion of the disposing employer's** experience account ~~of the disposer, its rate shall be two and seven-tenths percent (2.7%) until a higher or lower rate is established under IC 22-4-11-2 and IC 22-4-11-3~~ **in accordance with IC 22-4-11.5.** If the acquiring employer was an employer at the time of the acquisition **or transfer,** the contribution rate assigned to it for that year shall continue throughout the remainder of the year **except as provided by IC 22-4-11.5.**

(c) Where there is no transfer of an account to ~~a successor~~ **an acquirer** and an employer has legally terminated its liability, then the employer's account shall be ~~terminated~~ **inactivated** and closed. Provided, however, that if that employer again becomes subject to the law within four (4) years of the date of ~~termination~~ **inactivation** of its account, then it shall:

(1) resume its former position with respect to the resources and liabilities of the experience account; and ~~shall~~

(2) be entitled to an experience rate computation under IC 22-4-11-2 and IC 22-4-11-3 if benefits have been payable from and chargeable to its experience account throughout the thirty-six (36) months immediately preceding the computation date.

~~(d) Domestic employment, as defined in IC 22-4-7-2(i) will not be considered in the transfer of an experience account under IC 22-4-7-2(a) or IC 22-4-7-2(b). The disposer will retain the domestic portion of its experience account and will be assigned a new reporting number.~~ *(Department of Workforce Development; Rule 11; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 871; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 32; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 37; filed Jun 15, 1955, 9:00 a.m.: Rules and Regs. 1956, p. 211; filed Sep 12, 1956, 12:30 p.m.: Rules and Regs. 1957, p. 110; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 74; filed Aug 19, 1971, 3:30 p.m.: Rules and Regs. 1972, p. 31; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 155; filed Nov 25, 1975, 3:05 p.m.: Rules and Regs. 1976, p. 103; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 60; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1910; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2596; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-7) to the Department of Workforce Development (646 IAC 3-1-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

SECTION 2. 646 IAC 3-4-12 IS ADDED TO READ AS FOLLOWS:

646 IAC 3-4-12 Transfer of all or part of business; division of experience balance

Authority: IC 22-4-18-1
Affected: IC 22-4-7-2; IC 22-4-10-6; IC 22-4-11.5; IC 22-4-32; IC 22-4.1

Sec. 10. (a) Each employer who disposes of or transfers all or part of his or her organization, trade, or business under any one (1) or combination of:

(1) IC 22-4-7-2(a);

(2) IC 22-4-7-2(b); or

(3) IC 22-4-11.5;

shall immediately notify the department in writing.

(b) The disposing employer and the acquiring employer shall thereafter promptly submit to the department, in writing, information requested by the department, including the completion and filing of prescribed forms, where necessary, as the department may request relating to the disposition and acquisition.

(c) Based upon information obtained under subsection (b) and any other relevant information in the department's records, the department shall do the following:

(1) Determine whether the disposition, acquisition, or transfer comes within the meaning of any one (1) or combination of the following:

(A) IC 22-4-7-2(a).

(B) IC 22-4-7-2(b).

(C) IC 22-4-11.5.

(2) Notify the disposing employer and the acquiring employer of its determination.

(d) In each case where the department determines there has been an acquisition under IC 22-4-7-2(a), the acquiring employer shall assume the position of the disposing employer with respect to all the resources and liabilities of the disposer's experience account except as provided under 646 IAC 3-1-7.

(e) In each case where the department determines there has been an acquisition under IC 22-4-7-2(b), the acquiring employer shall assume a portion of the experience account of the disposer. The acquiring employer and disposing employer shall submit to the department notification of the acquisition on prescribed forms for the partial transfer properly containing all requested information within the time period specified in IC 22-4-10-6(b). The department shall notify the acquiring employer and the disposing employer of its determination.

(f) In each case where the department determines that there has been a transfer under IC 22-4-11.5, the department shall do the following:

(1) Evaluate whether there has been a violation under IC 22-4-11.5.

(2) Notify the acquiring employer and the disposing employer of its determination.

(g) When the notification of acquisition, disposition, or transfer is received or upon the department's own initiative, the experience balance and other factors shall be divided in the following manner:

(1) The department shall determine ratios (hereinafter called the "transfer percentages"). These transfer percentages shall be obtained by determining the ratios that the wages paid in connection with the portion of the business retained and the wages paid in connection with the portion of the business disposed of or transferred are to the total wages paid by the disposer during either of the following periods:

(A) The three (3) full fiscal years ending on June 30 immediately preceding the disposition date and the period from the end of these three (3) periods to the date of disposition.

(B) Such lesser period as the disposer has been an employer.

(2) In all cases of a partial transfer, the disposer will be reassigned a new experience account. If the acquiring employer was not an employer before the acquisition or transfer, it shall be assigned an experience account based on the portion of the experience account transferred from the disposing employer; however, if the acquirer was an employer immediately before the acquisition date, it will retain its original experience account, in addition to the portion of the disposing employer's experience account that the acquiring employer is required to take from the disposing employer, in accordance with IC 22-4-7-2(b) or IC 22-4-11.5, or both.

(3) The transfer percentages shall then be applied to the following:

(A) The wages paid by the disposing employer in either of the following:

(i) Each of the last three (3) twelve (12) month periods ending June 30 before the date of the disposition or transfer.

(ii) Such lesser period as the disposer has been an employer.

(B) The wages paid by the disposing employer after the:

(i) end of three (3) twelve (12) month periods; and

(ii) before the date of disposition or transfer.

(C) The credit or deficit balance in the disposing employer's experience account as of the disposition date.

(4) Wages paid and the disposing employer's experience balance shall be:

(A) transferred from the original experience account of the disposing employer; and

(B) allocated to the separate experience accounts of the:

(i) disposing employer; and

(ii) acquiring employer;

in accordance with the respective transfer percentage of each.

(5) All benefits chargeable to the disposer's original experience account subsequent to the disposition date shall be charged to the disposer's reassigned experience account and the acquirer's experience account in accordance with the transfer percentages. Except as provided by IC 22-4-11.5, annual rates of contribution for the disposing employer and the acquiring employer shall be based on the adjusted employment experience of each employer as of the regular computation date for subsequent years.

(6) Any written determination made by the department shall become conclusive and binding upon both the

disposing and acquiring employer unless within fifteen (15) days, commencing with the day following the day upon which the initial determination is mailed to the employing unit, one (1) or both of the employers file a protest in writing to the determination, setting forth the grounds and reasons. The protest of the employer shall be heard and determined under IC 22-4-32-1 through IC 22-4-32-15. In any case, both the disposing employer and the acquiring employer shall be:

(A) made parties to the hearing before the liability administrative law judge; and

(B) entitled to receive copies of all pleadings and the decision.

(Department of Workforce Development; 646 IAC 3-4-12)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 6, 2006 at 8:30 a.m., at the Department of Workforce Development, 10 North Senate Avenue, Room 301A, Indianapolis, Indiana the Department of Workforce Development will hold a public hearing on proposed amendments to 646 IAC 3-1-7 and new rule 646 IAC 3-4-12, which are related to transfers of a portion of a trade or business for purposes of unemployment insurance and pursuant to Senate Enrolled Act 612.

These changes will not add any additional costs to small businesses. These proposed rules do not impose any requirements or costs on a regulated entity not expressly required by state or federal law.

Copies of these rules are now on file at 10 North Senate Avenue, Room SE202 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Ron Stiver
Commissioner
Department of Workforce Development

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

Proposed Rule
LSA Document #05-228

DIGEST

Amends 646 IAC 2 to eliminate references to Federal laws no longer in existence and to amend and, where appropriate, repeal rules that were previously used in the administration of federal programs that are no longer in operation. Repeals 646 IAC 2-1-2, 646 IAC 2-1-9, 646 IAC 2-1-15, 646 IAC 2-1-16, 646 IAC 2-1-17, 646 IAC 2-1-21, 646 IAC 2-1-23, 646 IAC 2-3, 646 IAC 2-4, 646 IAC 2-5-1, and 646 IAC 2-7-2. *NOTE: LSA Document #05-228, printed at 29 IR 643, was resubmitted for publication.* Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

These changes will not add any additional costs to small businesses.

646 IAC 2-1-2	**646 IAC 2-1-27**
646 IAC 2-1-4	**646 IAC 2-2-2**
646 IAC 2-1-9	**646 IAC 2-3**
646 IAC 2-1-13	**646 IAC 2-4**
646 IAC 2-1-15	**646 IAC 2-5-1**
646 IAC 2-1-16	**646 IAC 2-5-2**
646 IAC 2-1-17	**646 IAC 2-6-1**
646 IAC 2-1-19	**646 IAC 2-7-2**
646 IAC 2-1-20	**646 IAC 2-7-3**
646 IAC 2-1-21	**646 IAC 2-7-4**
646 IAC 2-1-23	**646 IAC 2-8-1**
646 IAC 2-1-24	**646 IAC 2-9-1**

SECTION 1. 646 IAC 2-1-4 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-1-4 "Chief local elected official" defined
Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 4. "Chief local elected official" means **the mayor or the president of the county commissioners in** the following:

(1) ~~The mayor or the president of the county commissioners in~~ Any ~~service~~ **regional workforce** area where there is only one (1) unit of general local government, a city, or **a** county.

(2) ~~The mayor or president of the county commissioners in~~ Any service area where there are two (2) or more ~~such~~ units of general local government, a city, or a county.

(Department of Workforce Development; 646 IAC 2-1-4; filed May 26, 1992, 5:00 p.m.: 15 IR 2223; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-1-4) to the Department of Workforce Development (646 IAC 2-1-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 2. 646 IAC 2-1-13 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-1-13 "Grant recipient" defined
Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 13. "Grant recipient" means the entity selected by the ~~private industry council~~ **regional workforce board** in agreement with the chief elected official of a designated ~~service~~ **regional workforce** area to receive, distribute, and account for **the following:**

(1) All funds received from the department. ~~and for~~

(2) Any other funds for which the ~~private industry council~~

regional workforce board may have local oversight responsibility.

(Department of Workforce Development; 646 IAC 2-1-13; filed May 26, 1992, 5:00 p.m.: 15 IR 2224; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-1-13) to the Department of Workforce Development (646 IAC 2-1-13) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 3. 646 IAC 2-1-19 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-1-19 "Labor exchange" defined

Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 19. "Labor exchange" means the following:

(1) Those Wagner-Peyser services identified in subdivision (2) administered by the department and provided solely by the state merit employees to the full extent that funds are appropriated under the Wagner-Peyser Act, with no duplication of services by other entities. Labor exchange services may be provided by nondepartmental employees using non-Wagner-Peyser resources if Wagner-Peyser funds are insufficient to permit departmental employees to provide all the necessary and required services.

(2) Wagner-Peyser services include the following:

(A) Assessment.

(B) Testing, including state merit testing.

(C) Employment counseling.

(D) Job referral, including job service matching and resume system.

(E) Job placement, including job service matching and resume system.

(F) Job development.

(G) Referral to job vocational education.

(H) Dissemination of labor market information.

(I) Meeting the unemployment insurance work test.

(J) Providing qualified job applicants.

(K) Mass recruitment.

(L) Job analysis.

(M) Statewide recruitment for hard to fill openings.

(N) Targeted job tax credit (TJTC) vouchering.

(O) Affirmative action and equal employment opportunity planning.

(P) Interstate job clearance.

(3) Nothing in this section prohibits nondepartmental employees from providing those services defined in ~~JTPA,~~ **the Workforce Investment Act,** IMPACT, ~~JOBS,~~ SINGLE PARENT HOMEMAKER, or other appropriate federal, state, local, and private revenue source programs.

(Department of Workforce Development; 646 IAC 2-1-19; filed May 26, 1992, 5:00 p.m.: 15 IR 2225; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-1-19) to the Department of Workforce Development (646 IAC 2-1-19) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 4. 646 IAC 2-1-20 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-1-20 "Nondepartmental employees" defined

Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 20. "Nondepartmental employees" means employees under local merit-based personnel systems employed by **any of the following:**

(1) Grant recipients. ~~administrative entities or~~

(2) Regional workforce boards.

(3) Other entities contracting with the department.

(Department of Workforce Development; 646 IAC 2-1-20; filed May 26, 1992, 5:00 p.m.: 15 IR 2225; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-1-20) to the Department of Workforce Development (646 IAC 2-1-20) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 5. 646 IAC 2-1-24 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-1-24 "Regional workforce area" defined

Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 24. ~~"Service~~ **"Regional workforce** area" means an area of the state comprised of one (1) or more units of general local government that sets out the following:

(1) Promotes effective delivery of employment and training services including services for economically disadvantaged, displaced workers, and other targeted groups as designated by federal and state assistance programs.

~~(2) Is consistent with labor market areas or standard metropolitan statistical areas. This subdivision shall not be construed to require designation of an entire labor market area and is consistent with areas in which related services are provided under other state or federal programs.~~

~~(3)~~ **(2)** Shares common boundaries for the delivery of related services administered by the department.

~~(4) Has the same meaning as service delivery areas (SDA) under Title II of the JTPA and substate area (SDA) under Title III of JTPA.~~

(Department of Workforce Development; 646 IAC 2-1-24; filed May 26, 1992, 5:00 p.m.: 15 IR 2225; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-1-24) to the Department of Workforce Development (646 IAC 2-1-24) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 6. 646 IAC 2-1-27 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-1-27 "Employment and training office" or "employment and training center" defined

Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 27. "Employment and training office" **or "employment and training center"** means ~~the following:~~ ~~(1)~~ that much of any local facility in a ~~service~~ **regional workforce** area and so designated in the local plan of service, for the express purpose of providing the department's:

(1) employment and training program;

(2) veterans services programs; and

(3) unemployment insurance program;

where designated by the department.

~~(2) "Employment and training center" means the same as subdivision (1).~~

(Department of Workforce Development; 646 IAC 2-1-27; filed May 26, 1992, 5:00 p.m.: 15 IR 2226; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-1-27) to the Department of Workforce Development (646 IAC 2-1-27) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 7. 646 IAC 2-2-2 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-2-2 Responsibilities

Authority: IC 22-4-18-1
Affected: IC 4-15-1; IC 22-4-18-4; IC 22-4.5

Sec. 2. (a) Under IC 22-4-18-4, there are established in the department two (2) coordinate sections. One shall administer employment and training services, and the other shall administer unemployment insurance services. Each section shall be responsible for the discharge of its distinctive functions under the direction of the executive director.

(b) Responsibilities of the department shall be as follows:

(1) The department:

(A) shall have all of the powers and duties as described in IC 22-4-18-1; ~~and IC 22-4-18-5.~~

~~(2) The department~~ **(B)** may create and issue policy and operational directives necessary for the administration of:

(i) the unemployment insurance services; and

(ii) all other employment and training services;

administered directly by the department or contracted through ~~private industry councils,~~ **regional workforce boards,** grant recipients, or other entities directly contracting with the department; ~~The department~~

(C) will determine compliance in the instance of conflicting policy; ~~The department~~ **and**

(D) will assume responsibility in instances where compliance with policy issued by the department conflicts and causes noncompliance with policy or directives issued by entities external to the department.

~~(3)~~ **(2)** Grant recipients, ~~administrative entities,~~ **regional workforce boards,** and any other entities contracting directly with the department may be subject to corrective actions for failure to meet performance standards established by the department.

~~(4)~~ **(3)** The corrective action may range from technical assistance to penalties for noncompliance with performance standards as defined by department policy and federal and state statutes and rules.

~~(5)~~ **(4)** The department shall **do the following:**

(A) Adhere to the:

(i) policies;

(ii) principles;

(iii) procedures;

(iv) terms; and

(v) conditions;

of the state personnel system as contained in IC 4-15-1-1 et seq. for department personnel.

~~(6) The department shall~~ **(B)** Require:

(i) each grant recipient; ~~administrative entity,~~

(ii) each regional workforce board; and

(iii) other entities contracting directly with the department;

to assure that their personnel system adheres to the merit-based principles as defined by the U.S. Office of Personnel Management.

(c) Planning functions of the department shall be as follows:

(1) The department shall be responsible for the **following:**

(A) Development of a state plan for the employment and training system that includes coordination between employment and training services and unemployment insurance services. This plan shall serve to meet all federal and state plan requirements for all department administered resources.

~~(2) The department shall be responsible for~~ **(B)** Implementing the state plan for the employment and training system through the following:

~~(A)~~ **(i)** Issuance of, and the establishment of, standards of performance.

~~(B)~~ **(ii)** Reviewing and approving locally submitted plans of service including those provisions ~~which~~ **that** involve state merit employees.

~~(3)~~ **(2)** The department shall administer its resources through the employment and training system. Preferential consideration for the delivery of employment and training services shall be given to entities identified by ~~private industry councils and~~ chief **local** elected officials of each ~~service~~ **regional workforce** area unless the department determines that alternative entities would be more effective to achieve the state's goals as described in the state's employment and training plan. Contracts for the provision of Wagner-Peyser labor exchange services shall include requirements ~~which~~ **that** ensure department employees are:

(A) used exclusively in the provision of ~~such~~ **the** services;

and ~~that department employees are~~

(B) not displaced as a result of the contracts.

This subdivision shall not be interpreted to mean that the supplementation of labor exchange services through resources other than Wagner-Peyser shall be limited to department employees in the event Wagner-Peyser funds are inadequate to provide the necessary and required labor exchange services. If Wagner-Peyser funds are reduced below current levels, the department will do all that is reasonably possible to retain current local service delivery levels, and full utilization of state merit employees, from whatever funding sources are available.

~~(4) Goals and objectives for the state plan shall be proposed by the Indiana workforce development coordinating council no later than the December before the beginning of the two (2) year planning cycle. The goals and objectives shall be consistent with the mission of the state's long range plan for vocational and technical education.~~

~~(5)~~ **(3)** The draft plan, or its modification, shall be submitted for review and comment to the commission for vocational and technical education and other appropriate entities as determined by the department and before the plan is recommended for approval to the governor. ~~by the Indiana workforce development coordinating council.~~ The department shall present the plan to the general public for comment no later than the month of April ~~prior to~~ **before** the start of the two (2) year planning cycle.

~~(6)~~ **(4)** At a minimum, the state plan for employment and training services shall provide the following:

(A) Experience of the employment and training system in the previous two (2) year planning cycle.

(B) The goals and objectives for the next two (2) year planning cycle.

(C) Priorities and direction for use of resources.

~~(7)~~ **(5)** The department may coordinate with the Indiana department of commerce to develop a joint plan for the coordination of resources under the direction of both departments that results in employment opportunities for all citizens of the state with special emphasis for:

(A) economically disadvantaged individuals;

(B) displaced workers; and

(C) others with substantial barriers to employment;

as well as meets the hiring needs of the state's employers with special emphasis on the recruitment, placement, and training needs of indigenous, small scale employers.

(Department of Workforce Development; 646 IAC 2-2-2; filed May 26, 1992, 5:00 p.m.: 15 IR 2227; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-2-2) to the Department of Workforce Development (646 IAC 2-2-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 8. 646 IAC 2-5-2 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-5-2 Service provider selection

Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 2. (a) The department may issue policies for the selection of service providers or program services distinct from the procurement policies applicable to vendors of:

(1) supplies;

(2) equipment;

(3) construction; and

(4) services;

consistent with subsection (d).

(b) These policies shall apply to:

(1) the department;

(2) grant recipients; ~~administrative entities,~~ ~~and~~

(3) regional workforce boards;

(4) other entities directly contracting with the department, contracted by the department for the provisions of employment and training services; and

(5) all subcontractors of those entities;

who provide employment and training services in an assistance relationship for programs for which the department has administrative responsibility.

(c) The department shall require that grant recipients and other entities directly contracting with the department have written policies and procedures to assure that primary consideration in selecting agencies or organizations to deliver services within a ~~service~~ **regional workforce** area shall be based upon the effectiveness of the agency or organization in delivering comparable or related services based on **the following:**

(1) Demonstrated performance goals.

(2) Costs or price.

(3) Quality of training. ~~and~~

(4) Characteristics of participants.

Organizations or agencies so selected must be entities ~~which~~ **that** are legally authorized to enter into contractual relationships.

(d) The department shall require grant recipients, and other entities directly contracting with the department for funds other than Wagner-Peyser, to have written procurement policies ~~which~~ **that** include prohibition against the duplication of facilities or services available in the area (with or without reimbursement) from federal, state, or local services, unless it is demonstrated that the alternate services or facilities would be more:

(1) effective; or ~~more~~

(2) likely to achieve the service area's performance goals.

(Department of Workforce Development; 646 IAC 2-5-2; filed May 26, 1992, 5:00 p.m.: 15 IR 2231; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-5-2) to the Department of Workforce Development (646 IAC 2-

5-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 9. 646 IAC 2-6-1 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-6-1 Reports and record keeping
Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 1. (a) The department shall be required to keep records that are sufficient to permit the **following:**

(1) Preparation of reports required by federal and state funding sources. ~~and to permit the~~

(2) Tracing of funds to a level of expenditure adequate to ensure that funds have not been spent unlawfully.

(b) Each grant recipient shall make reports in the form and manner determined by the executive director to enable the department to **do the following:**

(1) Assure adherence to fiscal requirements.

(2) Determine program effectiveness and integrity.

(3) Conform to requirements of the ~~JTPA~~ **following:**

(A) The Workforce Investment Act.

(B) The Wagner-Peyser Act. ~~and~~

(C) Corresponding regulations. ~~and~~

(4) Fulfill other requirements of programs ~~which~~ **that** it administers.

(c) Each grant recipient, and other entities directly contracting with the department, shall **do the following:**

(1) Keep fiscal programmatic and participant records that are sufficient to permit **the following:**

(A) Preparation of reports required by the department. ~~and the~~

(B) Tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully.

~~(d) Each grant recipient, and other entities directly contracting with the department, shall,~~

(2) As specified by the director:

(A) maintain ~~such~~ **the** records; and

(B) submit ~~such~~ **the** reports in ~~such~~ **the** form and containing ~~such~~ **the** information;

as the department requires regarding the performance of its programs.

(Department of Workforce Development; 646 IAC 2-6-1; filed May 26, 1992, 5:00 p.m.: 15 IR 2232; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-6-1) to the Department of Workforce Development (646 IAC 2-6-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 10. 646 IAC 2-7-3 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-7-3 Programmatic incentives or remedies
Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 3. (a) The department shall determine applicable remedies for noncompliance with the law, regulations, and department policy.

(b) Remedies may include, but are not limited to, the following:

(1) Withholding of funds.

(2) Technical assistance as part of corrective action.

(3) Reorganization of the ~~private industry council~~ **workforce investment board or regional workforce board, or both.**

(4) Redesignation of the ~~service~~ **regional workforce** area.

(c) The department shall establish an incentive system based on performance measures for the purpose of:

(1) oversight;

(2) evaluation; and

(3) monitoring the performance;

of an integrated employment and training system. *(Department of Workforce Development; 646 IAC 2-7-3; filed May 26, 1992, 5:00 p.m.: 15 IR 2233; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-7-3) to the Department of Workforce Development (646 IAC 2-7-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

SECTION 11. 646 IAC 2-7-4 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-7-4 Oversight
Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 4. (a) The department shall **do the following:**

(1) Perform evaluation, monitoring, and audits at intervals and depth of scope in such a manner as determined by the department and consistent with requirements of the Indiana state board of accounts.

~~(b) The department shall~~ **(2)** Determine and communicate the oversight responsibilities and activities of the **following:**

(A) Grant recipient. ~~administrative entity, and~~

(B) Regional workforce boards.

(C) Other entities directly contracting with the department.

~~(c)~~ **(b)** The department may periodically:

(1) review;

(2) rescind; ~~and/or~~ **or**

(3) reissue;

policy as it deems necessary.

~~(d)~~ **(c)** The department shall **do the following:**

(1) Evaluate its program according to applicable evaluation criteria established by the Indiana commission on vocational and technical education. ~~and shall~~

(2) Submit findings to the commission.

~~(e) As used in this section, the "department's program" means the comprehensive service areawide program administered by~~

~~the department's grant recipients. The department shall submit findings regarding its sixteen (16) grant recipients to the commission annually. The department shall not evaluate eligible recipients as defined by the Carl Perkins Act.~~

~~(f)~~ **(d)** The department shall not **do the following:**

(1) Deny funding to grant recipients based on any effectiveness criteria ~~which~~ **that** is not a requirement of any act or rule pertinent to the department's funding sources.

~~(g) The department shall not~~ **(2)** Utilize any effectiveness criteria ~~which~~ **that** are measurements of process rather than outcomes.

~~(h) The department shall not~~ **(3)** Use funds from: ~~JTPA,~~

(A) the Wagner-Peyser Act;

(B) Trade Adjustment Assistance;

(C) unemployment insurance; or

(D) any other current funding source;

for the purpose of carrying out any ~~such~~ evaluations ~~which~~ **that** are beyond the requirements of the department of labor for measuring program effectiveness.

(Department of Workforce Development; 646 IAC 2-7-4; filed May 26, 1992, 5:00 p.m.: 15 IR 2233; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-7-4) to the Department of Workforce Development (646 IAC 2-7-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

SECTION 12. 646 IAC 2-8-1 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-8-1 Logo

Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 1. (a) The department shall designate an official logo, and employment and training offices shall incorporate the logo in signage and letterheads.

(b) This section shall not preclude a ~~service~~ **regional workforce** area from utilizing any other logo in addition to that designated by the department. *(Department of Workforce Development; 646 IAC 2-8-1; filed May 26, 1992, 5:00 p.m.: 15 IR 2233; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-8-1) to the Department of Workforce Development (646 IAC 2-8-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

SECTION 13. 646 IAC 2-9-1 IS AMENDED TO READ AS FOLLOWS:

646 IAC 2-9-1 Establishment of grievance procedures

Authority: IC 22-4-18-1
Affected: IC 22-4.5

Sec. 1. (a) The department shall:

(1) formulate and maintain a state level grievance procedure; and ~~shall~~

(2) ensure the establishment of procedures at the ~~service~~ **regional workforce** area level;

for any complaint involving violation of rules and regulations of state and federal programs for which the department has responsibility.

(b) Each grant recipient, ~~administrative entity,~~ **regional workforce board,** or other entities directly contracting with the department, shall establish and maintain a grievance procedure for grievances or complaints about its programs and activities from participants, subgrantees, subcontractors, and other interested persons.

(c) Nothing in this section precludes or supersedes access to grievance procedures under state or local merit personnel policies and procedures.

~~(d) At a minimum, a grievance procedure shall include those provisions identified in the JTPA and department policy.~~ *(Department of Workforce Development; 646 IAC 2-9-1; filed May 26, 1992, 5:00 p.m.: 15 IR 2233; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Department of Employment and Training Services (645 IAC 3-9-1) to the Department of Workforce Development (646 IAC 2-9-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

SECTION 14. THE FOLLOWING ARE REPEALED: 646 IAC 2-1-2; 646 IAC 2-1-9; 646 IAC 2-1-15; 646 IAC 2-1-16; 646 IAC 2-1-17; 646 IAC 2-1-21; 646 IAC 2-1-23; 646 IAC 2-3; 646 IAC 2-4; 646 IAC 2-5-1; 646 IAC 2-7-2.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 6, 2006 at 9:00 a.m., at the Department of Workforce Development, 10 North Senate Avenue, Room 301A, Indianapolis, Indiana the Department of Workforce Development will hold a public hearing on proposed amendments and repeal of rules that were previously used in the administration of federal programs that are no longer in operation.

These changes will not add any additional costs to small businesses. These proposed rules do not impose any requirements or costs on a regulated entity not expressly required by state or federal law.

Copies of these rules are now on file at 10 North Senate Avenue, Room SE202 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Ron Stiver
Commissioner
Department of Workforce Development

TITLE 816 BOARD OF BARBER EXAMINERS

Proposed Rule
LSA Document #05-146

DIGEST

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. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Affected:

NAICS 611511: Barber Colleges: 17

NAICS 812111: Barber Shops: 1,767

The types of small businesses most likely to be affected by the proposed rule are barber schools and barber shops.

Estimated Administrative Costs

The Indiana Professional Licensing Agency provides administrative services to 39 boards, commissions, and committees. These boards, commissions, and committees are charged with regulating a wide range of professionals and entities. The statutes include both standard setting and regulatory authority. By statute, IPLA consolidates budget requests and is urged to consolidate and coordinate operations of the various boards, commissions, and committees where feasible in order to provide efficient and cost effective services. The boards, committees and commissions are required to establish fees sufficient to cover the cost of operations, both direct and indirect. Fees are deposited into the general fund from which IPLA receives an appropriation.

It is difficult to determine whether fees equal the direct and indirect costs of each board, commission, and committee because IPLA is statutorily required to consolidate functions and budgets where possible. Renewal fee revenues fluctuate depending on the renewal cycle for a profession. In addition, fees are assessed for a variety of functions and the amounts collected from year to year will vary.

The operations of the barber board are labor intensive with both inspections of facilities and the administration of examinations. Examinations are administered by staff for approximately six times per year at various barber schools. In addition, approximately five examinations per year are administered at correctional facilities around the state. The board is in the early stages of outsourcing the administration of the examinations. For many years the maximum statutory examination fee was $50 which is insufficient to generate enough revenue to utilize a professional examination service. The increase in cost will be more than compensated for in increased benefits including not only a savings of staff time but, also in the ability to provide applicants with the ability to take the examinations at sites located around the state with almost immediately availability of results. The time for obtaining license will be shortened.

The board consists of four members. The board meets at least six times per year in Indianapolis. The board is staffed by a board director, assistant board director, and five case managers. These individuals also staff two other boards and spend the majority of their time working for the cosmetology board which has approximately 10 times the total number of licenses as the barber board. In addition, there are four cosmetology inspectors. The inspectors inspect cosmetology salons, esthetic salons, electrology salons, tanning salons, manicure salons, cosmetology schools, barber shops, and barber schools. In addition to regular inspections, they may at times assist in the investigation of consumer complaints. There is one supervisor of the investigators who is also responsible for inspections and investigations conducted by other IPLA boards and commissions.

The current total number of licensees for all barber board license types is 5796. There are approximately 17 barber schools and 1,767 shops, all of which must be routinely inspected. The time required for an inspection varies by the size of the facility and the services provided by the facility. A small barber shop can be inspected in as little as 15-30 minutes. A large shop might take 2 hours or more to inspect. Inspection of a school may take one-half day or more. How many inspections can be performed in one day will vary by the location of the facilities to be inspected. A greater number of inspections can be conducted in a metro area than in a rural area over the same time period. An inspector's schedule is affected by the amount of time spent traveling from facility to facility.

Staff salaries and benefits (⅓ director, assistant director, 5 case managers): $99,580

Inspector salaries and benefits (four inspectors) (10% of total): $16,734

Additional expenses:

License production cost: postage, printing, supplies (based on 280 licenses issued in 2004): $3,570 ($12.75 per license)

Six board meetings per year (4 board members)

Per Diem: $1,200 annually

Travel and subsistence: $3,875 annually

Estimated Total Annual Economic Impact on Small Businesses

The following figures are based upon the number of applications for licensure and renewal applications received in 2004.

Applications for licensure	Current application fee	Proposed Application fee	Yearly Revenue	Proposed revenue	Difference
School (1)	$300	$500	$300	$500	$200
Shops (150)	$40	$50	$6000	$7500	$1500
	Current renewal (4 year renewal*)	Proposed Renewal fee	Yearly Revenue	Proposed revenue	Difference
School (1 renewed in 2004)	$300	$500	$300	$500	$200
Shops (353 renewed in 2004)	$40	$150	$14,120	$52,950	$38,830

Justification of Requirements or Costs

Pursuant to IC 25-1-8-2, fees shall not be less than are required to pay all of the costs, both direct and indirect, of the operation of the barber board. In 2005, the General Assembly enacted SEA 139 (P.L.194-2005) to give the Indiana Professional Licensing Agency and the boards, commissions, and committees it serves the authority to set fees by rule that had previously been set by statute. This change was considered imperative in order for the boards and commissions to keep up with the rising costs of national examinations and other expenses associated with operating a licensing board.

However, it should be emphasized that the proposed rule changes will not increase or decease the number of small businesses already affected by the current regulations.

Consideration of Alternative Methods of Achieving the Purpose of the Proposed Rule

Since the rule provides for fees only, the consideration of alternate compliance or reporting requirements, or other operational standards was not appropriate. There are no new reporting or record keeping requirements for small businesses as a result of the proposed rule.

Explanation of Determination

The Board sought to set fees at the minimum levels needed in order to comply with IC 25-1-8-2.

Supporting Data, Studies, or Analyses

The agency used the following data in determining the fiscal impact of the rule:

The board conducted a comparison of fees assessed in surrounding states. The following states were surveyed: Illinois, Iowa, Michigan, Minnesota, Ohio, and Wisconsin. The current application fee for barber schools is $300.00. This fee is being increased to $500. The average application fee in the surveyed states is $596.33. The current renewal fee for barber schools is $300.00 every four years. This fee is being increased to $500 every four years or $125 per year. The average annual renewal fee in the surveyed states is $231.33 or $925.32 every four years.

Fees currently assessed by the board are insufficient to cover the cost of providing services for barber shops. The current application fee for barber shops is $40. This fee is being increased to $50. The average application fee in the states surveyed is $60.50. The renewal fee for each barber shop is $40 every four years ($10 per year). The board proposes to increase the fee to $150 every four years ($37.50 per year). The average yearly renewal fee in the states surveyed is $39.

Currently, a staff of seven employees works for the State Board of Barber Examiners. These employees also staff the Cosmetology and Funeral Boards, which occupy the majority of the staff's time. An additional four employees serve as inspectors for the cosmetology and barber boards and are on the road. In addition, other IPLA employees provide services to the Barber Board and the thirty-eight other boards and commissions served by the IPLA. These include executive staff, legal, IT, HRD, receptionists, mail room, etc. Aside from salaries and benefits for staff, expenses include printing, postage, supplies, equipment, mileage for the inspectors' automobiles, web-hosting, etc. IPLA revenue is also used to support the operations of other state agencies with which we do business such as IDOA, ATG, SBA, and IOT.

816 IAC 1-2-11 **816 IAC 1-3-6**
816 IAC 1-3-1 **816 IAC 1-4-1**
816 IAC 1-3-4 **816 IAC 1-5**

SECTION 1. 816 IAC 1-2-11 IS AMENDED TO READ AS FOLLOWS:

816 IAC 1-2-11 Use of instructors

Authority: IC 25-7-5-14; IC 25-7-5-15
Affected: IC 25-7-11; IC 25-7-12

Sec. 11. (a) In order for a barber school licensee to operate a barber school, ~~there must be~~ a ~~registered~~ **licensed** barbering instructor **must be** physically present at all times where and while:

(1) classroom instruction is being given; and ~~where and while~~

(2) students are engaged in the practice of barbering.

However, where ~~there are~~ audio-visual aids or tapes **are** being used in the adjoining rooms, the presence of one (1) ~~registered~~ **licensed** barber instructor in the clinic room is sufficient.

~~(b) Notwithstanding subsection (a), a registered barbering instructor may be absent from the classroom because of personal illness or the death of a close relative, or to further the barbering instructor's education related to barber instructor, if:~~

~~(1) the absence does not exceed three (3) days;~~

~~(2) a registered Indiana barber with at least five (5) years experience or a student instructor who is enrolled in a school of barbering licensed by the board takes the place of the absent registered barbering instructor; and~~

~~(3) the board is notified, by telephone immediately and in~~

~~writing within seventy-two (72) hours, of the absence of the barbering instructor and of the reason for, and duration of, the absence.~~

~~(c)~~ **(b)** Every instructor in ~~an accredited~~ **a licensed** school shall:

(1) devote his **or** her entire time during school or class hours to that of instructing the students; and ~~shall~~

(2) not apply time to **the** private practice of barbering for compensation.

(Board of Barber Examiners; Rule 24; filed Feb 6, 1981, 4:10 p.m.: 4 IR 374; filed Feb 20, 1986, 3:00 p.m.: 9 IR 1660; filed Nov 28, 1988, 5:30 p.m.: 12 IR 922; readopted filed Jun 22, 2001, 8:59 a.m.: 24 IR 3823)

SECTION 2. 816 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

Rule 3. Examinations

816 IAC 1-3-4 Reexamination requirements; barber

Authority: IC 25-7-5-14; IC 25-7-5-15
Affected: IC 25-1-6-4; IC 25-7

Sec. 4. (a) ~~This section establishes reexamination requirements under IC 25-7-1-5(b) for~~ An applicant who has failed one (1) or both portions of the barber examination ~~and.~~

~~(b) An applicant~~ who:

(1) files a ~~new~~ **repeat examination** application; ~~and~~

(2) pays the required fee; **and**

(3) takes the repeat examination within ninety (90) days after the date of the first examination **failure;**

shall be required to take only the portion or portions of the examination previously failed.

~~(c)~~ **(b)** An applicant who fails to ~~apply within a ninety (90) day period, or fails to~~ pass the ~~previous reexamination~~ **repeat examination within ninety (90) days after the date of the first examination failure** will be required to take only the portion or portions of the examination previously failed upon filing **the following** within one (1) year after the date of the examination failure:

(1) A ~~new~~ **repeat examination** application. ~~with~~

(2) The required fees.

(3) Proof of completing two hundred fifty (250) additional hours of training in ~~an approved~~ **a licensed** school of barbering. ~~and pay the examination fee.~~

~~(d)~~ **(c)** An applicant who fails to apply within one (1) year after the date of the first examination failure shall ~~be required to~~ **do the following:**

(1) File a new application **as provided by IC 25-1-6-4.**

~~(1) with~~ **(2) Submit the following:**

(A) Proof of completing two hundred fifty (250) additional hours of training in an approved school of barbering.

~~(2) pay~~ (B) The ~~examination fee; and~~ **required fees.**

(3) ~~shall~~ Pass both portions of the examination.

(d) All first attempt state board examinations must be taken within one (1) year after graduation from an applicable course in a licensed barber school. Any repeat examination must be successfully completed within three (3) years after graduation from the same course.

(e) The board may waive the requirements in subsection (c) if an applicant can show good cause. *(Board of Barber Examiners; 816 IAC 1-3-4; filed Jan 20, 1993, 4:00 p.m.: 16 IR 1511; readopted filed Jun 22, 2001, 8:59 a.m.: 24 IR 3823)*

SECTION 3. 816 IAC 1-3-6 IS AMENDED TO READ AS FOLLOWS:

816 IAC 1-3-6 Barber examination; application; filing deadline

Authority: IC 25-7-5-14; IC 25-7-5-15
Affected: IC 25-7

Sec. 6. A completed application and the applicable ~~fee~~ **fees** for ~~the~~ **licensure by** examination to practice as a ~~registered~~ **licensed** barber shall be filed with the board ~~no~~ **not** later than two (2) weeks ~~prior to~~ **before** the **next** scheduled examination date. *(Board of Barber Examiners; 816 IAC 1-3-6; filed Jan 20, 1993, 4:00 p.m.: 16 IR 1512; readopted filed Jun 22, 2001, 8:59 a.m.: 24 IR 3823)*

SECTION 4. 816 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

816 IAC 1-4-1 Barbering instructors; education and training; experience requirements

Authority: IC 25-7-5-14; IC 25-7-5-15
Affected: IC 25-7-5

Sec. 1. ~~(a)~~ To qualify for ~~registration~~ **licensure** as a barbering instructor, an individual must:

(1) be an Indiana ~~registered~~ **licensed** barber;

(2) be a graduate of an accredited high school or have received a high school equivalency certificate (GED); and

(3) have completed at least nine hundred (900) hours in instructor training from a school of barbering.

~~(b) Until July 1, 2001, candidates to become barber instructors may count five (5) years of full-time practice as an Indiana barber as the equivalent of nine hundred (900) hours of instructor training from a school of barbering.~~ *(Board of Barber Examiners; 816 IAC 1-4-1; filed Nov 28, 1988, 5:30 p.m.: 12 IR 922; filed Sep 18, 1998, 11:46 a.m.: 22 IR 454; readopted filed Jun 22, 2001, 8:59 a.m.: 24 IR 3823)*

SECTION 5. 816 IAC 1-5 IS ADDED TO READ AS FOLLOWS:

Rule 5. Fees

816 IAC 1-5-1 Application/issuance fees
Authority: IC 25-1-8-2; IC 25-7-6-1; IC 25-7-11
Affected: IC 25-7

Sec. 1. The board shall charge and collect the following application/issuance fees:
(1) Barber license: $50
(2) Barber instructor license: $50
(3) Barber shop license: $50
(4) Barber school license: $500
All fees in this category are currently forty dollars ($40), except for school licenses, which are three hundred dollars ($300). *(Board of Barber Examiners; 816 IAC 1-5-1)*

816 IAC 1-5-2 Examination fees
Authority: IC 25-1-8-2; IC 25-7-6-1; IC 25-7-11
Affected: IC 25-1-8-5; IC 25-7

Sec. 2. (a) If the board administers the examination, the examination or repeat examination fee is sixty dollars ($60).

(b) If the board elects to use a professional examination service under IC 25-1-8-5, an applicant for licensure by examination shall pay the examination or repeat examination fee assessed by the professional examination service that administers the examination directly to the professional examination service. *(Board of Barber Examiners; 816 IAC 1-5-2)*

816 IAC 1-5-3 Temporary work permit fee
Authority: IC 25-1-8-2; IC 25-7-6-1; IC 25-7-11
Affected: IC 25-7

Sec. 3. The board shall charge and collect a ten dollar ($10) fee for a temporary work permit. *(Board of Barber Examiners; 816 IAC 1-5-3)*

816 IAC 1-5-4 Renewal fees
Authority: IC 25-1-8-2; IC 25-7-6-1; IC 25-7-11
Affected: IC 25-7

Sec. 4. The board shall charge and collect the following renewal fees:
(1) Barber license: $100
(2) Barber instructor license: $100
(3) Barber school license: $500
(4) Barber shop license: $150
(Board of Barber Examiners; 816 IAC 1-5-4)

816 IAC 1-5-5 Fee for verification of a license to another state
Authority: IC 25-1-8-2; IC 25-7-6-1; IC 25-7-11
Affected: IC 25-7

Sec. 5. The board shall charge and collect a ten dollar ($10) fee for verification of a license to another state or jurisdiction. *(Board of Barber Examiners; 816 IAC 1-5-5)*

816 IAC 1-5-6 Fee for a duplicate license or permit
Authority: IC 25-1-8-2; IC 25-7-6-1; IC 25-7-11
Affected: IC 25-7

Sec. 6. The board shall charge and collect a ten dollar ($10) fee for the issuance of a duplicate license or permit. *(Board of Barber Examiners; 816 IAC 1-5-6)*

SECTION 6. 816 IAC 1-3-1 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 13, 2006 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, Indiana the Board of Barber Examiners will hold a public hearing on proposed amendments concerning the use of instructors, concerning reexamination requirements, concerning the barber examination, concerning barber instructors, and new rules 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; to establish fees for duplicate licenses; and to repeal 816 IAC 1-3-1.

The Board of Barber Examiners has the authority to promulgate rules establishing the fees for examination, application, issuance, renewal, reinstatement, replacement or duplicate licenses, verification of licenses, or temporary permits for barbers, barber instructors, barber schools, and barber shops. This proposed rule establishes the fees in compliance with the statutory changes in SEA 139 (P.L.194-2005). This proposed rule will have costs to 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

Final Readopted Rules

TITLE 260 STATE DEPARTMENT OF TOXICOLOGY

Final Rule
LSA Document #05-152(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.

260 IAC 1.1-1-1
260 IAC 1.1-2-2

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

260 IAC 1.1-1-1 Training applicants' screening examination
260 IAC 1.1-2-2 Certification of equipment and chemicals

LSA Document #05-152(F)
Intent to Readopt Rules Published: July 1, 2005: 28 IR 3051; August 1, 2005: 28 IR 3351
Filed with Secretary of State: November 7, 2005, 2:35 p.m.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Final Rule
LSA Document #05-217(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.

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

LSA Document #05-217(F)
Intent to Readopt Rules Published: September 1, 2005; 28 IR 3661
Filed with Secretary of State: November 1, 2005, 3:00 p.m.

TITLE 760 DEPARTMENT OF INSURANCE

Final Rule
LSA Document #05-86(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.

760 IAC 1-50-6
760 IAC 1-50-9
760 IAC 1-50-10
760 IAC 1-50-11
760 IAC 1-61
760 IAC 1-64

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

760 IAC 1-50-6 Appeals of continuing education courses
760 IAC 1-50-9 Solicitor's continuing education requirements
760 IAC 1-50-10 Reciprocal agreements
760 IAC 1-50-11 List of continuing education course providers
760 IAC 1-61 Viatical Settlements
760 IAC 1-64 Valuation of Life Insurance Policies

LSA Document #05-86(F)
Intent to Readopt Rules Published: July 1, 2005: 28 IR 2813; August 1, 2005: 28 IR 3352
Filed with Secretary of State: November 7, 2005, 10:50 a.m.

TITLE 910 CIVIL RIGHTS COMMISSION

Final Rule
LSA Document #05-153(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. *NOTE: LSA Document #05-153, printed at 28 IR 3051, was resubmitted for publication.* Effective 30 days after filing with the Secretary of State.

910 IAC 3

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

910 IAC 3 ENTITLED EMPLOYMENT DISCRIMINATION AGAINST DISABLED PERSONS

LSA Document #05-153(F)
Intent to Readopt Rules Published: July 1, 2005: 28 IR 3051; and August 1, 2005: 28 IR 3352
Filed with Secretary of State: October 18, 2005, 2:30 p.m.

1 Year Notice (IC 4-22-2-25)

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-19

November 2, 2005

VIA HAND DELIVERY
Representative Michael Murphy, Chair
Administrative Rules Oversight Committee
c/o Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Attn: Sarah Burkman

RE: LSA #05-19

Dear Representative Murphy:

On behalf of the Indiana State Department of Health, I am submitting this notice to the Administrative Rules Oversight Committee in compliance with IC 4-22-2-25, because the agency has determined that the promulgation of the captioned rule will not be completed within one year after publication of the notice of intent to adopt a rule.

The department published its notice of intent to adopt a rule for the captioned document on March 1, 2005 (28 IR 1713). The rule will be published as a proposed rule in the December 1, 2005 Indiana Register. The rule will be cited as 410 IAC 3.6. The authority for rule adoption is IC 16-19-3-5 and IC 16-35-1.5-6.

The department has had changes in leadership in the program area encompassed by this proposed rule. As a result drafting of a proposed rule has taken longer than anticipated.

The body with the authority to adopt rules, the Indiana State Department of Health Executive Board meets every other month. The department expects that the rule can be approved by the governor by July 1, 2006.

This notice setting forth the expected date of approval of LSA #05-19 as July 1, 2006 is being submitted in a timely manner. November 5, 2005 is the two hundred and fiftieth day after publication of the notice of intent to adopt a rule.

Sincerely,

Sue Uhl
Deputy State Health Commissioner

cc: Stephen Barnes, Managing Editor, Legislative Services Agency

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
LSA Document #05-330(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING COMPLIANCE MONITORING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 326 IAC 3 concerning compliance monitoring and 326 IAC 7-2 concerning sulfur dioxide compliance requirements. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 3; 326 IAC 7-2.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This First Notice of Comment Period replaces the previous notice of rulemaking on compliance monitoring, LSA Document #01-408, which has been withdrawn. A new rulemaking is being initiated because of the many changes to the scope of the rulemaking. In particular, the Credible Evidence rule, LSA Document #04-180, and the federal Compliance Assurance Monitoring (CAM) rule, LSA Document #04-182, are now separate rulemakings. In addition, other compliance topics are being considered for this rulemaking as described in this notice. The decision to begin a new compliance rulemaking provides a better opportunity for public participation by interested parties.

IDEM has identified technical corrections and clarifications that are needed in existing rules in 326 IAC 3 and 326 IAC 7 concerning emissions monitoring requirements. IDEM proposes the following:

- Clarification of 326 IAC 3-5 concerning the quality assurance requirements that apply to flow monitors and reinstatement of requirements for reporting malfunctions of continuous monitoring equipment.
- Clarification of data availability requirements concerning continuous emission monitoring systems (CEMS).
- Corrections to 326 IAC 3-6 to include references to source sampling procedures conducted under 40 CFR 61.
- Clarification of requirements in 326 IAC 3-6-5 for source testing to demonstrate compliance with the limit on particulate matter having aerodynamic diameters less than ten microns in diameter (PM_{10}).
- Removal of 326 IAC 7-2-1(f) because it does not adequately address the problem of conflicting test results to demonstrate compliance, and the issue is now addressed by the credible evidence rule in 326 IAC 1-1-6.
- Other corrections or clarifications that may be identified from comments during the course of this rulemaking.

IDEM also proposes a change to monitoring requirements that affect peaking units subject to the acid rain provisions of 40 CFR 75. Peaking units that must operate a CEMS to comply with 40 CFR 60 or 326 IAC 3-5 are currently required to perform an annual relative accuracy test as well as quarterly quality assurance functions pursuant to these rules. Because peaking units are not always operating, a requirement that they be started only to conduct these quality assurance functions is unnecessary. IDEM proposes a revision to 326 IAC 3-5 to allow these peaking units to comply with the Continuous Emission Monitoring provisions in 40 CFR 75 instead of those under the New Source Performance Standards in 40 CFR 60.

This rulemaking will also include changes previously identified by U.S. EPA (February 8, 1994, 59 FR 5742) as deficiencies in order to obtain approval of the monitoring rules into the state implementation plan. U.S. EPA found that language providing "Commissioner's discretion", in some cases, would allow the Commissioner to remove or modify federally enforceable requirements. IDEM plans to modify this language to ensure that the exercise of Commissioner's discretion is accompanied by U.S. EPA approval as a revision to the State Implementation Plan (SIP).

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Making clarifications and corrections to the monitoring rules.

- 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? Modifying the Commissioner's discretion language is required by federal law in order for the rules to be approved into the SIP. The other clarifications and corrections are "state-only" requirements.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Changing applicable requirements for peaking plants to 40 CFR 75.

- 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? This alternative would change the state rule to exempt peaking plants from a testing requirement in state rules in favor of a more appropriate federal requirement.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

40 CFR 60 (Standards of Performance for New Stationary Sources), 40 CFR 61 (National Emission Standards for Hazardous Air Pollutants), 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories), and 40 CFR 75 (Continuous Emission Monitoring) are applicable federal laws impacting this rulemaking. 40 CFR 60 contains compliance monitoring requirements for new stationary sources. 40 CFR 61 contains compliance monitoring requirements for

sources emitting hazardous air pollutants. 40 CFR 63 contains compliance monitoring requirements for specific source categories emitting hazardous air pollutants. 40 CFR 75 contains continuous emission monitoring requirements.

326 IAC 3 as currently written includes language previously identified by U.S. EPA (February 8, 1994, 59 FR 5742) as deficient. Changes are necessary to obtain approval of the monitoring rules into the state implementation plan.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative should not have a fiscal impact because the amendments would be corrections and clarifications of existing requirements.

Potential Fiscal Impact of Alternative 2. This alternative would save peaking plants the cost associated with starting up and running equipment, conducting tests, and submitting reports at times when the plant would not normally be in operation.

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, W041
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 list of interested parties has been compiled based on interest shown in the previous notices on this subject. A workgroup will be formed to discuss issues involved in this rulemaking. The workgroup will be made up of IDEM staff and interested stakeholders. Individuals that requested to participate in the workgroup for the Compliance Monitoring rulemaking (#01-408), which is withdrawn, are being included in the workgroup formed for this new rulemaking.

If you wish to be added to the list of interested parties, provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Christine Pedersen, Rules Development Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana). Please provide your name, phone number and email address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

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:

#05-330(APCB) Compliance Rule
Christine Pedersen Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the Tenth Floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 2, 2006.

Additional information regarding this action may be obtained

from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #05-332(APCB)

DEVELOPMENT OF NEW RULES CONCERNING REGULATIONS OF EMISSIONS FROM OUTDOOR FURNACES AND OUTDOOR BOILERS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rule 326 IAC 4-3 concerning regulation of emissions from outdoor furnaces and outdoor boilers. 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 4-3.

AUTHORITY: IC 13-14-8; IC 13-17-3-12; IC 13-17-4-1.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

In an effort to control heating costs, homeowners are increasingly turning to furnaces installed outside the home to heat their homes. These units are typically many times larger than an indoor wood stove with potentially high emissions of particulate matter. Currently, outdoor furnaces are not regulated in Indiana or at the national level. The department has received numerous complaints concerning outdoor furnaces in residential areas and has received requests to develop regulations for outdoor furnaces.

There are many different types of, and names for, wood burning appliances. Outdoor furnaces are considered the same as outdoor boilers and references to outdoor furnaces in this notice includes outdoor boilers. An indoor wood burning device designed to heat only part of a house is commonly referred to as a wood stove or wood heater. If a wood burning device is designed to provide heat for an entire house, then that device is located outside the house and referred to as a wood furnace. In general, these furnaces are part of a larger group called outdoor furnaces.

Outdoor furnaces heat water or air that is pumped back into the home or other small buildings. Units are typically the size of a small wood shed or mini-barn. They can heat buildings ranging in size from one thousand eight hundred (1,800) to twenty thousand (20,000) square feet. Outdoor furnaces are much larger and differ from the much smaller indoor wood stoves, pellet stoves, fireplaces, and barbecue pits.

Most outdoor furnaces or outdoor boilers use wood as the primary fuel. Some outdoor furnaces have auxiliary units or attachments that allow gas, oil, or coal to be burned in addition to wood. Stack heights on outdoor wood furnaces are typically in the range of eight (8) to ten (10) feet above ground level. Chimneys on homes are almost always above the roof line and are typically twenty (20) to thirty (30) feet above ground level.

Outdoor furnaces or outdoor boilers are available in a wide variety of sizes and efficiencies. However, the basic design of outdoor furnaces causes fuel to burn incompletely, or smolder, which can result in thick smoke and high particulate emissions. Problems are aggravated if an outdoor furnace is not sited properly or not used following manufacturers' recommendations.

Smoke is a primary complaint from residents who live near outdoor furnaces. Temperature inversions cause smoke to stay close to the ground. The smoke drifts across property lines and penetrates adjacent structures. It can also drift across nearby roadways and block visibility for drivers.

New York, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, Vermont, and the Northeast States for Coordinated Air Use Management have filed a petition to the United States Environmental Protection Agency (U.S. EPA) seeking regulations of outdoor furnaces and outdoor boilers. U.S. EPA has tested some outdoor furnaces. The overall efficiency is approximately fifty percent (50%) of the thermal energy of the wood. For comparison purposes, the efficiency of a fireplace may be as low as ten percent (10%). According to the U.S. Federal Energy Management Program, the thermal energy-efficiency of a base model gas-fired water industrial boiler is seventy-eight percent (78%). Most modern hot air furnaces have a thermal energy efficiency of about eighty percent (80%).

Pollutants in the emissions from outdoor furnaces include particulate matter, carbon dioxide, and volatile organic compounds including formaldehyde, benzene, polycyclate, aromatic hydrocarbons, and a number of trace chemicals.

The United States Environmental Protection Agency (U.S. EPA) has regulated "wood heaters", which are defined as "an enclosed, woodburning appliance capable of and intended for space heating and domestic water heating..." (40 CFR, Part 60, Subpart AAA, 60.530) under standards that have been in effect for all wood heaters manufactured and sold at retail since July 1, 1992 (40 CFR, Part 60, Subpart AAA 60.533). These standards exempt outdoor furnaces. Since outdoor wood furnaces are not regulated by U.S. EPA, some local ordinances have been adopted to ban their use, such as in Otego, New York where the law declares "furnaces create noxious and hazardous smoke, soot, fumes, odors, and air pollution, [which] can be detrimental to citizens' health, and can deprive neighboring residents of the enjoyment of their property or premises.".

Vermont has proposed regulations for outdoor wood-fired boilers and they are on schedule to become effective after the

Vermont legislative session. Vermont passed standards on water stoves, another name used for outdoor furnaces, in 1997 prohibiting them from being located closer than two hundred (200) feet to another residence and required an increased stack height for water stoves closer than five hundred (500) feet. However, citizen complaints continued. Vermont's proposed rules are more stringent, including emission limits and sales regulations. The Connecticut legislature has passed an act concerning outdoor wood-burning furnaces that include the requirement to use manufacturers' recommendations, stack heights, and siting restrictions.

Alternatives To Be Considered Within the Rulemaking

Approaches to regulating outdoor furnaces include the following:

Alternative 1. Establish emission standards for outdoor furnaces.

Particulate emissions can be very high. There are also emissions of carbon dioxide and volatile organic compounds.

- 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.

Alternative 2. Restrict type of and use of outdoor furnaces

Examples include requiring minimum stack heights, minimum setbacks from homes or other structures, the following of manufacturers' recommendations, and the restriction of moisture content of wood that can be burned.

- 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.

Alternative 3. Ban outdoor furnaces or partial ban on types of outdoor furnaces

Examples include banning the use except for primary heating of the home, banning the use in residential neighborhoods, or banning the use on particular days or times of the day. Such a ban could also grandfather existing furnaces.

- 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.

Alternative 4. A Combination of Alternatives 1 through 3

- 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

This rulemaking is not based on federal law. However, U.S. EPA has a voluntary residential wood smoke reductions initiative that targets emissions from indoor wood stoves.

Potential Fiscal Impact

The potential fiscal impact depends on the alternative approaches selected. For example, for an owner to comply with any of the alternatives, it may mean buying a new outdoor furnace or not being able to use an outdoor furnace that the owner has already purchased. The cost of an outdoor furnace ranges from three thousand dollars ($3,000) to ten thousand dollars ($10,000) depending on size and capacity. Owners or users of outdoor furnaces can typically save between forty percent (40%) to seventy percent (70%) compared to other types of heating equipment, but savings vary widely from year to year, by region, and are based on the individual owner's furnace and how the owner uses it.

The cost of restrictions or partial ban is more difficult to determine. It may be as low as a few hundred dollars to modify a stack height or may result in modifications such as re-siting the furnace that may cost many hundreds of dollars. It is possible that the entire outdoor furnace for an owner would have to be entirely replaced because the existing one could not be modified. However, there would still be cost-savings and benefits due to newer models being more efficient.

The cost of wood for wood furnaces can vary widely depending on the type and availability of wood. If clean burning wood is required, the cost would depend on the difficulty of acquiring the new wood versus the existing noncompliant wood. Wood on average for the nation costs six-thousandths of a dollar ($0.006) per one thousand (1,000) British Thermal Units (BTU) compared to natural gas (2004) at seven-thousandths of a dollar ($0.007) per one thousand (1,000) BTU, propane at sixteen-thousandths of a dollar ($0.016) per one thousand (1,000) BTU, and electric heat at twenty-six thousandths of a dollar ($0.026) per one thousand (1,000) BTU. However, these costs vary widely depending on the region of the country and current supplies. Health impacts and environmental damage resulting from emissions from outdoor furnaces have not been quantified.

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, W041
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

An external workgroup will be established to discuss issues involved in this rulemaking. The first workgroup meeting is scheduled for December 14, 2005 at 1 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana. If you wish to attend or receive notice of workgroup meetings, or have suggestions related to the workgroup process, please contact Sean Gorman, Rules Development Section, Office of Air Quality at (317) 234-3533 or (800) 451-6027 (in Indiana)

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as the case may be.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:
#05-332(APCB) Outdoor furnaces
Sean Gorman Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the Tenth Floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 3, 2006.

Additional information regarding this action may be obtained from Sean Gorman, Rules Development Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

LSA Document #05-23(APCB)

DEVELOPMENT OF NEW RULE 326 IAC 20-95 CONCERNING INCORPORATION OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rule 326 IAC 20-95 concerning the incorporation of national emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers and process heaters. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: March 1, 2005, Indiana Register (28 IR 1863).

CITATIONS AFFECTED: 326 IAC 20-95.

AUTHORITY: IC 13-14-8; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

On September 13, 2004, U.S. EPA issued a final national emission standard for hazardous air pollutants (NESHAP) (69 FR 55218) to reduce arsenic, cadmium, chromium, hydrogen chloride, hydrogen fluoride, lead, manganese, mercury, nickel, and various organic hazardous air pollutants (HAPs) from industrial, commercial, and institutional boilers and process heaters. The NESHAP will implement Section 112(d) of the Clean Air Act by requiring all major sources in this source category to meet HAP emission standards reflecting the application of maximum achievable control technology (MACT). Major sources are sources that emit ten (10) tons a year or more of a single HAP, or twenty-five (25) tons a year or more of a combination of HAPs. The NESHAP includes emission limits and work practice standards for new and existing units.

Boilers produce steam by burning any combination of coal, wood, or other fuel. The steam is used to produce electricity or heat. Process heaters heat raw or intermediate materials during an industrial process. Boilers and process heaters are used at facilities such as refineries, chemical and manufacturing plants, paper mills, or as stand-alone units for heat.

The rule contains solid, liquid, and gaseous fuel subcategories of boilers and process heaters. Solid fuel includes, but is not limited to, coal, wood, biomass, tires, plastics, and other nonfossil solid materials. Liquid fossil fuel means petroleum, distillate oil, residual oil and any form of liquid fuel derived from such material. Gaseous fuel includes, but is not limited to, natural gas, process gas, landfill gas, coal derived gas, refinery gas, and biogas. Blast furnace gas is exempted from the definition of gaseous fuel.

The rule limits the amount of HAPs that may be released from exhaust stacks of existing large and limited use solid fuel boilers and process heaters. Large units are watertube boilers and process heaters with heat input capacities greater than ten (10) million British thermal units per hour (MMBtu/hr). The limited use category applies to units with an annual capacity factor (ratio of actual input and potential annual heat input) of ten percent (10%) or less. A process heater means an enclosed device using controlled flame, that is not a boiler, and the unit's primary purpose is to transfer heat indirectly to a process material or to heat transfer material for use in a process unit, instead of generating steam. Process heaters do not include units used for comfort or space heat, food preparation for on-site consumption, or autoclaves. Large existing solid fuel units are subject to a particulate matter (PM) limit or an alternative total selected metals (TSM), hydrogen chloride (HCl), and mercury (Hg) limits. Large existing limited use solid fuel units are only subject to the PM or alternative TSM limit. Existing industrial boilers and process heaters must comply with the rule no later than September 13, 2007.

Boilers and process heaters in the existing large or limited use gaseous or liquid fuel category only have to submit an initial notification report, but these units are not subject to any other requirements in the rule. Boilers and process heaters in the existing small gaseous, liquid, or solid fuel subcategories are not required to keep any records or submit an initial notification. Initial notifications were due March 12, 2005.

For new units, large and limited use solid fuel units are subject to PM/TSM, HCl, Hg, and carbon monoxide (CO) limits. New small solid fuel units are subject to PM/TSM, HCl, and Hg limits. New large and limited use liquid fuel units are subject to PM, HCl, and CO limits. New small liquid fuel units are subject to PM and HCl limits. New large gaseous fuel units are subject to a CO limit. New small liquid fuel units that only burn gaseous fuel or distillate oil only have to submit an initial notification. New small gaseous fuel subcategory units are not required to keep any records or submit an initial notification. New industrial boilers and process heaters must comply with the final rule when they are brought on line.

The final rule includes a compliance alternative provided for in the Clean Air Act (Section 112(d)(4)) based on threshold emission limits for HCl and manganese. If an owner/operator demonstrates that its boiler units can meet health based threshold emission limits, such sources are no longer subject to either the HCl limit in the rule or the manganese portion of the TSM limit. This compliance alternative is based on a U.S. EPA determination that those units do not pose a significant risk to human health or the environment. Sources that are eligible for the compliance alternative established in the federal rule must assume federally enforceable emissions limitations in their Title V permit. These limits ensure that the HAP emissions do not exceed levels used to qualify for the compliance alternative.

Additional requirements or clarifications that IDEM has included in draft rule language include:

1) Emissions Averaging - The NESHAP allows emission averaging at the source, if more than one existing large solid fuel boiler is located at the source, unless the state chooses to exclude the emission averaging option. IDEM is allowing the emission averaging provision.

2) Notice for Compliance Test - The NESHAP requires sources to submit a notification of performance testing thirty (30) days prior to the date testing is scheduled to begin. 326 IAC 3-6 requires sources to submit notification of performance testing thirty-five (35) days prior to the test date. This rulemaking will specify that test notifications are required to be submitted to IDEM thirty-five (35) days prior to the test date.

3) Site Specific Risk Assessment - Sources demonstrating eligibility for the health based compliance alternative can use either lookup tables provided in the federal rule or perform a site specific risk assessment. For sources performing a site specific risk assessment the federal rule allows the source to use any "scientifically accepted peer-reviewed risk assessment methodology" and does not provide for approval of methodology by IDEM or U.S. EPA. IDEM is proposing that sources must use U.S. EPA's "Air Toxics Risk Assessment Reference Library" (EPA-453-K-04-001B) or receive prior approval from IDEM for other methodologies.

4) Most Exposed Individual and Annual Certification - The federal rule requires sources to update and resubmit the health based eligibility demonstration every time there is a process change that would affect the sources eligibility for the health based limit. Sources are also required to annually certify that the demonstration is still accurate. One change that could affect eligibility is a change in where people live around the plant for sources using a site specific risk assessment. The federal rule requires the site specific risk assessment to estimate inhalation exposure for where people live or the individual most exposed to the source's emissions. While there is no definition in the rule for this exposure estimate, U.S. EPA's "Air Toxics Risk Assessment Reference Library" defines "maximum exposed individual (MEI)" as the highest modeled offsite concentration and "maximum individual risk (MIR)" as the populated location with the highest modeled ambient concentration. However, where people live could change over time. IDEM proposes that sources consider where people could reasonably be expected to live in the future, including consideration of potential land use changes to reduce the likelihood of changes due to population shifts. The source will re-certify annually compliance with the health based compliance demonstration. If there are changes to the most exposed individual because of population changes increasing the hazard index to above one (1.0) that were not considered in the initial demonstration and the source is no longer eligible for the health based compliance option, then the source will be subject to the emission limits, operating limits, and work practice standards in 40 CFR 63, Subpart DDDDD.

5) Health Based Emission Limits - Sources complying with the health based emission limits for hydrogen chloride (HCl) or total selected metals (TSM) using the compliance alternative, either through lookup tables or by conducting a site specific risk assessment, are required to include the process parameters used in the health based compliance alternative demonstration in their Title V permit. The NESHAP does not specifically state that the Title V must include the allowable emission rate derived from either the lookup table or site specific risk assessment. IDEM is proposing that the state rule specify that this emission rate be included in the Title V permit.

6) Submission of demonstration - The federal rule suggests that an eligibility demonstration need only be submitted in order for a source to begin complying with the alternative limits. However, as a permitting authority, IDEM has the authority to disapprove a risk based compliance demonstration if it is deemed incomplete or incorrect. IDEM proposes to clarify in the state rule that if IDEM disapproves the eligibility demonstration, the source must comply with the emission limits, operating limits, and compliance requirements in subpart DDDDD.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL elements).

The following information is provided with each NIFL element:

(1) The environmental circumstance or hazard dictating the imposition of the NIFL element in order to protect human health and the environment in Indiana; and examples in which federal law is inadequate to provide this protection for Indiana.

(2) The estimated fiscal impact and expected benefits of the NIFL element, based on the extent to which the NIFL element exceeds the requirements of federal law.

(3) The availability for public inspection of all materials relied on by IDEM in the development of the NIFL element including, if applicable: health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data, analyses of methods to effectively implement the proposed rule, and other background data.

NIFL Element: Methodology for Site Specific Risk Assessment (326 IAC 20-95(c)(3))

(1) The federal rule allows for sources to use any "scientifically accepted peer-reviewed risk assessment methodology" without any review of the methods from U.S. EPA or IDEM.

(2) The benefit of this element is that sources will know whether or not the methodology is acceptable and will provide for a quicker review by IDEM of the health based compliance demonstration. The U.S. EPA "Air Toxics Risk Assessment Reference Library" provides a flexible format for performing a risk assessment and is the reference material that is used by IDEM Office of Air Quality for risk assessments in other situations.

(3) IDEM relied on the "Air Toxics Risk Assessment Reference Library" in the development of this NIFL element which is available for public inspection at the Office of Air Quality, IDEM or online at http://www.epa.gov/ttn/fera/risk_atra_main.html.

NIFL Element: Estimating Inhalation Exposure for Site Specific Risk Assessment (326 IAC 20-95(c)(4))

(1) The federal rule requires the site specific risk assessment to estimate inhalation exposure for where people live or for the individual most exposed to the source's emissions. However, where people live could change over time. IDEM proposes that sources consider where people could reasonably be expected to live in the future, including consideration of potential land use changes to reduce the likelihood of changes due to population shifts.

(2) The benefit of this element is that the annual certification of eligibility for the health based compliance alternative is less likely to change and the public is assured that the source will continue to comply with the health based compliance alternative. While the cost associated with this element could be significant if a source is no longer eligible to use the health based compliance option, this is not necessarily the outcome in every case. Also, the cost would vary depending on the source and the controls required. In any event, the cost would be in line with the costs estimated by U.S. EPA for compli-

ance with Subpart DDDD. U.S. EPA estimates for the total nationwide capital costs for the federal rule is one and seven-tenths billion dollars ($1,700,000,000) for the first five years with an annualized cost of eight hundred million dollars ($800,000,000) in the fifth year. Depending on the number of facilities demonstrating eligibility for the compliance alternatives, these costs could fall to one and four-tenths billion dollars ($1,400,000,000) in capital expenditures and six hundred ninety million dollars ($690,000,000) in annualized costs.

(3) IDEM did not rely on any specific materials in the development of this NIFL element.

NIFL Element: Health Based Emission Limits (326 IAC 20-95(c)(5))

(1) The federal rule does not specifically list emission rate as one of the parameters that define the affected source as eligible for the health based compliance alternative to be included in the Title V operating permit. IDEM is adding this to the list of parameters to be included in the permit in the state rule to clarify requirements for Indiana sources. The allowable emission rate based on either the look up table or the site specific risk assessment is an important component of the demonstration.

(2) The benefit of this element is providing clarification on what IDEM will include in the Title V operating permit for sources choosing to use the health based compliance alternative. There is no cost associated with this element.

(3) IDEM relied on the requirements included in the plywood and composite wood products NESHAP for this element which is available for public inspection at the Office of Air Quality, IDEM or online at http://www.epa.gov/ttn/atw/plypart/fr30jy04.pdf.

Potential Fiscal Impact

At this time it is uncertain whether or not the fiscal impact of this draft rule will exceed $500,000. While the cost associated with sources having to consider changes to where people may live could be significant if the result is that a source is no longer eligible to use that option, it is not expected that many sources in Indiana will be performing a site specific risk assessment as part of a health based compliance demonstration. IDEM specifically solicits comment on the potential fiscal impact of the draft language proposed in this rulemaking.

Public Participation and Workgroup Information

IDEM held a meeting with stakeholders in May 2005 after the first notice published. If you feel that additional meetings should be scheduled, please contact Susan Bem, Rules Development Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from March 1, 2005, through March 31, 2005, 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:

GE Plastics Mt. Vernon, Inc. (GE)
Crawfordsville Electric Light & Power (CEL&P)
Clean Air Strong Economy (CASE) Coalition, submitted by Bingham McHale (CASE/BM)
Citizens Thermal Energy (CTE)
Purdue University (PU)
Alcoa Power Generating Inc - Warrick Power Plant (APGI)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The commenter supports the IDEM's proposal to allow the use of emission averaging. (GE, CEL&P, CASE/BM, CTE, PU, APGI)

Response: The department has included the emission averaging provision in the draft rule language.

Comment: The commenter is concerned about the timing of rule finalization and impact on current compliance planning for the September 13, 2007 compliance deadline. The current plan is to use emissions averaging and IDEM's proposal to not incorporate the federal rule by reference may make this option unavailable as a compliance option. The uncertainty of the outcome of the administrative rulemaking process also casts a shadow on the potential use of the health-based compliance alternative. (PU, CTE, CEL&P, APGI)

Response: The federal rule has provided the emissions averaging as a default condition in the NESHAP. Unless a state chooses not to include the emissions averaging provision, it will be included in the state rulemaking. IDEM is proposing draft rule language specifying that emissions averaging is allowed. IDEM is aware of the timing concerns. Sources should be aware of the changes IDEM is proposing in this rulemaking and identify which ones will affect them. The state rulemaking is not the only source of uncertainty for this rulemaking. U.S. EPA has received petitions for reconsideration of certain provisions of the final NESHAP. U.S. EPA recently requested comments on certain provisions of the approach used to demonstrate eligibility for the health based compliance alternative and may issue amendments to the NESHAP based on comments received.

Comment: IDEM should withdraw the first notice for this rulemaking and start over with a rulemaking format that achieves final adoption sooner (i.e. section 8 rulemaking). (PU)

Response: Starting over with a section 8 rulemaking would not be appropriate because IDEM has identified alternatives to the federal rule. Also, issuing a section 8 notice now would not speed up the process significantly now that a first notice has been published under the standard rulemaking format.

Comment: The federal rule went through a public comment process and the final rule reflects consideration of these comments. The final federal rule assures the application of a uniform set of requirements across the nation. (CASE/BM)

Response: IDEM is proposing changes to the federal rule to provide for consistent and efficient implementation in Indiana. Some of the clarifications proposed are based on provisions included in other NESHAPs with health based compliance alternatives. Also, there was no opportunity to comment on federal rule language for the health based compliance alternative prior to the final rule.

Comment: IDEM should carefully consider the economic impacts of any IDEM changes to the federal rule that could limit the use of the health-based compliance alternative. (CEL&P, CASE/BM)

Response: IDEM will consider the economic impacts of any changes and requests comments on costs from affected parties.

Comment: The commenter does not agree with IDEM's proposal within the health-based compliance alternative to require facilities using site-specific modeling to consider the impact of their emissions on current land use, but also on future "worst-case" land use assumptions. It would be difficult to predict what may be representative of future land use and U.S. EPA's federal rule is sufficiently protective of public health. (PU, CTE, CEL&P, APGI)

Comment: The commenter supports IDEM's goal of possible rule changes which can make the annual certification of eligibility for the health-based alternatives less likely to change, but the rule should only require worst-case exposure based on current land use, not possible future land use. (CEL&P)

Comment: The commenter opposes IDEM's proposal to estimate worst case exposure for both current and future land use assumptions. Federal guidance and risk experts (including the President's Commission on Risk Assessment and Risk Management in Regulatory Decision Making, and U.S. EPA's 1999 Final Report to Congress on Residual Risk) have called upon risk assessors to employ more realistic estimates of population exposure instead of worst case assumptions that overestimates risk. IDEM's proposal moves in the opposite direction of this. (GE)

Response: IDEM is proposing this change to ensure the site specific risk assessment considers the risk where people could reasonably live in the future, in order to ensure that such individuals are not exposed in areas where the hazard index for HCl and CL_2 or the hazard quotient for manganese is above one (1.0). This methodology would provide sources with confidence that this aspect of the risk assessment would not change. The important aspect of the draft rule language is that IDEM is requiring a "reasonable" assessment of possible changes to where people might live. The source will still re-certify annual compliance with the health based compliance demonstration. The intent of this change is not to overestimate risk but to provide for practical implementation of a health based compliance alternative for sources subject to a NESHAP. This will provide more certainty and is consistent with the concept of ambient air in criteria pollutant state implementation plans (SIPs).

Comment: The federal NESHAP requires sources to submit to the permitting authority the parameters that define the source as eligible for the health-based compliance alternative for incorporation in a federally enforceable operating permit. IDEM should not require that the permit be amended and issued before a source could use the health based compliance alternative because a source could be in non-compliance if IDEM fails to issue the required amendments to the permit before the compliance date. (PU, CTE, CEL&P, APGI, CASE/BM, GE)

Comment: The proposal to change the federal rule from "submitted" to "issued" raises the possibility that a source may have to comply with the Subpart DDDDD emission limits in the event the permit modification is appealed by a third party and a stay is issued. (CASE/BM)

Response: Instead of specifying that the permit be amended and issued before the source could use the health based compliance alternative, IDEM is proposing draft rule language that specifies that if IDEM disapproves the health based compliance demonstration, the source is then subject to the Subpart DDDDD emission limits. IDEM is required to assure compliance with all permits it issues, as well as the regulation of sources. Therefore, as the permitting authority, IDEM has the authority to approve or disapprove any permit application prior to issuance, if it is deemed to be incomplete or incorrect. If the health based parameters for inclusion in the permit have been submitted to IDEM and the health based compliance demonstration is disapproved by IDEM, the source will be subject to the Subpart DDDDD emission limits.

Comment: Including an emission limit for hydrochloric acid (HCl) or manganese (Mn) as one of the process parameters in the operating permit for the health-based compliance alternative places a burden on the source that the health-based compliance alternative sought to avoid, namely the imposition of a numerical emission limit for HCl or Mn on a unit that demonstrates eligibility for the health-based compliance alternative. The imposition of an emission limit is unnecessary given the protectiveness of fuel quality and parametric monitoring. (PU, CTE, CEL&P, APGI, GE)

Comment: The numerical emission limit for the health-based process parameter should not be based on emissions data from testing for health-based compliance alternative. The individual unit operating conditions may vary during the year and determining an appropriate emission limit may be difficult. (PU, CTE, CEL&P, APGI)

Comment: Including a limit in the permit based on actual emissions would create a new emissions limitation/standard for the health-based alternative. Under the federal rule, the value in the look-up table is the limit, not the site's emissions. (GE)

Response: The numerical emission limit for the health-based compliance option included in the draft rule language is based on the allowable emissions rate from the look-up table or the site-specific compliance demonstration emission rate that provides for the maximum hazard quotient (HQ) of one (1.0) for hydrogen chloride (HCl) and chlorine (CL_2) or manganese (Mn), as applicable, not the numerical emission limit based on the emissions data from testing.

Comment: Instead of pursuing broad policy perspectives on risk analysis within the narrow context of this rulemaking, IDEM should focus on the evaluation of low risk options and risk assessment within the context of a much broader evaluation. IDEM could do this when U.S. EPA issues a proposed facility risk rule later this year. (CTE, CEL&P, APGI, CASE/BM)

Comment: The commenter recommends that IDEM evaluate low-risk determinations associated with this rule on a case-by-

case basis until implementation issues associated with the health-based compliance alternatives and future residual risk requirements are better understood. (CASE/BM)

Response: Many of the changes for the risk analysis in this rule are specific to this rulemaking and need to be addressed at this time. Many of the changes included in this rule are based on requirements included in the health-based compliance option included in the plywood and composite wood products NESHAP.

Comment: The federal rule allows sources to use any scientifically accepted peer-reviewed risk assessment methodology. The state has not justified why sources must use the U.S. EPA's risk assessment library or get IDEM approval for an alternative. The approval process will consume some of the limited time available to employ the health-based compliance alternative. (GE)

Response: The federal rule does not specify what scientifically accepted peer-reviewed assessment methodologies are accepted. The federal rule allows for sources to use any "scientifically accepted peer-reviewed risk assessment methodology" without any review of the methods from U.S. EPA or IDEM. The U.S. EPA "Air Toxics Risk Assessment Reference Library" provides a flexible format for performing a risk assessment and is the reference material that is used by IDEM Office of Air Quality for risk assessments in other situations. This clarification establishes which risk assessment methodology is acceptable up front, which will make the approval process more clear, consistent, and timely.

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:

#05-23(APCB) Boiler MACT
Susan Bem Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the 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 January 3, 2006.

Additional information regarding this action may be obtained from Susan Bem, Rules Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 20-95 IS ADDED TO READ AS FOLLOWS:

Rule 95. Industrial, Commercial, and Institutional Boilers and Process Heaters

326 IAC 20-95-1 Industrial, commercial, and institutional boilers and process heaters

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to industrial, commercial, and institutional boilers and process heaters as provided in 40 CFR 63.7485*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart DDDDD*, national emission standards for hazardous air pollutants from industrial, commercial, and institutional boilers and process heaters.

(c) Owners and operators subject to this rule shall comply with 40 CFR 63, Subpart DDDDD*, except as follows:

(1) Owners and operators may use the emission averaging provisions as specified under 40 CFR 63.7522*.

(2) The performance testing shall also meet the requirements of 326 IAC 3-6, source sampling procedures, including the submittal of a test protocol not later than thirty-five (35) days prior to the intended test date.

(3) Owners and operators conducting a site-specific compliance demonstration under 40 CFR 63, Subpart DDDDD, Appendix A, Section 7* shall use U.S. EPA's "Air Toxics Risk Assessment Reference Library" (EPA-453-K-04-001B)* or an alternative method approved by the commissioner based on scientific validity and peer review.

(4) Owners and operators conducting a site-specific compliance demonstration under 40 CFR 63, Subpart DDDDD, Appendix A, Section 7* shall consider where people could reasonably be expected to live, including consideration of potential land use changes, when estimating the inhalation exposure for the individual most exposed to the facility's emissions or where people live.

(5) In addition to the list of parameters under 40 CFR 63, Subpart DDDDD, Appendix A, Section 10* that define the affected source as eligible for the health-based compliance alternative, the Part 70 operating permit shall also include, but is not limited to, the allowable emission rate based on either the:

(A) look-up tables in 40 CFR 63, Subpart DDDDD, Appendix A, Table 2 or 3*; or

(B) site-specific compliance demonstration emission rate that ensures a maximum hazard quotient (HQ) of one (1.0) or less for hydrogen chloride (HCl) and chlorine (CL_2); or for manganese (Mn), as applicable.

(6) If the department disapproves the health based eligibility demonstration submitted under 40 CFR 63, Subpart DDDDD, Appendix A, Sections 9* and 10*, the facility is subject to the emission limits, operating limit, and work practice standards in 40 CFR 63, Subpart DDDDD*.

(7) Owners and operators shall evaluate all process and non-process related parameters used in the health-based compliance demonstration with each annual Part 70 operating permit compliance certification and certify that the basis for the health based compliance demonstration has not changed.

***These copies are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 20-95-1)*

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 March 1, 2006, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on new rule 326 IAC 20-95

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 Susan Bem, Rules 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 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.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

LSA Document #05-117(APCB)

DEVELOPMENT OF NEW RULES CONCERNING NITROGEN OXIDE AND SULFUR DIOXIDE EMISSIONS FROM FOSSIL FUEL-FIRED POWER PLANTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new article 24 that contains three new rules 326 IAC 24-1, Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_x) Annual Trading Program, 326 IAC 24-2, Clean Air Interstate Rule (CAIR) Sulfur Dioxide (SO_2) Annual Trading Program, 326 IAC 24-3, Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_x) Ozone Season Trading Program, and new rule 326 IAC 10-4-16 concerning nitrogen oxide and sulfur dioxide emissions from fossil fuel-fired power plants and nitrogen oxide emissions from large non-electric generating units (non-EGUs). 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: June 1, 2005, Indiana Register (28 IR 2817).

CITATIONS AFFECTED: 326 IAC 10-4-16; 326 IAC 24-1; 326 IAC 24-2; 326 IAC 24-3.

AUTHORITY: IC 13-14-8; IC 13-17-3-1; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The Clean Air Interstate Rule (CAIR), signed by the U.S. EPA administrator on March 10, 2005, is a U.S. EPA program to supplement existing regulations to achieve substantial reductions of sulfur dioxide (SO_2) and nitrogen oxide (NO_x) emissions from fossil fuel-fired power plants. CAIR expands NO_x reductions from the original twenty-two (22) NO_x SIP Call states to twenty-eight (28) states, including Indiana, and the District of Columbia. The original NO_x SIP Call rule reduced Indiana power plant emissions by sixty-six percent (66%) and was implemented in 2004. For Indiana, the CAIR phase 1 NO_x ozone season cap for years 2009 through 2014 is the same as the current NO_x SIP Call budget. The phase 2 NOx ozone season cap for the years 2015 and beyond will reduce ozone season

NO_x emissions from forty-five thousand nine hundred fifty-two (45,952) tons per ozone season to thirty-nine thousand two hundred seventy-three (39,273) tons per ozone season. This represents a fifteen percent (15%) reduction for 2015 and beyond. CAIR adds a new annual NO_x emission cap for power plants in the CAIR region. The new NO_x annual caps for Indiana power plants are one hundred eight thousand nine hundred thirty-five (108,935) tons in 2009 through 2014 and ninety thousand seven hundred seventy-nine (90,779) tons in 2015 and beyond and represent a fifty-three percent (53%) and sixty-one (61%) reduction in annual power plant NO_x emissions compared to pre NO_x SIP Call levels for 2009 and 2015, respectively. CAIR includes an annual SO_2 emissions cap calling for a fifty percent (50%) reduction in years 2010 through 2015 and sixty-five (65%) reduction in 2015 and beyond from the levels required by the Acid Rain control provisions (Title IV) of the 1990 Clean Air Act Amendments (CAAA). The SO_2 annual caps for Indiana are two hundred fifty-four thousand five hundred ninety-nine (254,599) tons in 2010 through 2014 and one hundred seventy-eight thousand two hundred nineteen (178,219) tons in 2015 and beyond. These new SO_2 reduction requirements bring the total SO_2 emission reductions nationwide since the passage of the CAAA to almost ten (10) millions tons per year.

States have until September 11, 2006, to submit a rule implementing CAIR to U.S. EPA. However, there is a streamlined approval process and longer schedule for states that follow the U.S. EPA model rule or that make only limited changes to it. CAIR provides two compliance options for states to achieve the required emission reductions. The first option is to meet the state's CAIR emissions budgets for SO_2 and NO_x by requiring power plants to participate in three (3) interstate cap and trade programs administered by U.S. EPA that cap emissions in two phases. The three (3) trading programs include an ozone season NO_x program that will replace the NOx SIP Call trading program, a new annual NO_x trading program, and an annual SO_2 trading program that builds upon the existing Acid Rain program. The second option is to meet the state emissions budget for SO_2 and NO_x by reducing emissions from sources other than power plants or power plants in addition to other sources without participating in the trading program. This option allows states flexibility on how to achieve the required reductions, including which sources to control and whether to join the interstate cap and trade program.

IDEM is proposing to proceed with the first option, requiring emissions reductions from power plants by participation in the cap and trade programs because it is highly cost effective and it is unlikely there would be sufficient SO_2 and NOx reductions from other sources to meet Indiana's budgets.

Allowances cannot be traded between the NO_x annual and ozone season trading programs. The allowances are considered separate currencies. However, sources will be able to use banked NO_x allowances from the current NO_x SIP Call trading program in the new CAIR ozone season program. NO_x SIP Call sources that are not part of CAIR (i.e., non-electric generating units (non-EGUs)) can also be brought into the ozone season trading program. The draft rule language that IDEM proposes for the CAIR ozone season rule includes the non-EGUs that are currently subject to the NO_x SIP Call rule. The total allowances for the non-EGUs under the NO_x SIP Call were added to the CAIR NO_x ozone season trading budget. IDEM is reviewing the existing allocations and will recommend whether changes should be made to these allocations in the CAIR program. For purposes of the draft rule language, however, IDEM is carrying over the allocations from the NOx SIP Call rule as a placeholder and will continue discussions with the stakeholders. The SO_2 annual trading program is designed to work with the existing Acid Rain program. Sources will turn in Title IV allowances at a ratio of greater than one (1) to one (1) to ensure reductions beyond Title IV; sources may use pre-2010 allowances at a one (1) to one (1) ratio.

The draft rule includes several changes to the allocation methodology in the model rules for the NO_x trading programs. IDEM is aware that NO_x allowances have already been allocated, recorded by U.S. EPA, and traded for the 2009 ozone season. This is the first year that the U.S. EPA model rule allocates allowances for the CAIR ozone season trading program. The draft rule language contains language stating that these 2009 allowances have already been recorded by U.S. EPA in 326 IAC 24-3-8(b).

Timing

IDEM is proposing a three (3) year allocation, three (3) years in advance methodology for both the CAIR ozone season and annual trading programs similar to the existing NO_x SIP call rule. This is different than the model rule that provides for states to make an initial allocation for Phase I (2009-2014) and then make annual submissions of allocations six (6) years in advance. There is concern with the model rule methodology because it would force a new unit that was not part of the initial allocation to request allocations from the new unit set-aside for eleven (11) years. This is could be a problem if there is a large influx of new units causing the new unit set-aside to be oversubscribed, and new units would not receive the full amount of their requests.

Heat Input and Output

The draft language includes changes from the model rule with respect to heat input and output:

*A longer baseline period (1998-2004). The timeframe chosen by U.S. EPA in the model rule includes years that many Indiana sources were installing control equipment to comply with the NOx SIP Call, which would not be representative of actual operation.

*A fuel adjustment factor of one hundred percent (100%) for coal and sixty percent (60%) for all other fuels. This will provide some benefit to gas-fired units and recognize that many gas-fired units have oil backup requirements.

*Retains the output-based provision for new sources, but modifies the method to make the criteria the same for all units, regardless of whether coal-fired or not, and to make the criteria for combined heat and power (CHP) units consistent for all types of CHP systems.

*Changes the conversion factor for output to input to provide

a greater benefit for more efficient units.

In the model rule, the baseline heat input for existing sources is based on years 2000-2004 and the heat input for new sources is the first five years of operation. For existing sources, the model rule adjusts heat input by the fuel type. The heat input for coal-fired units is multiplied by one hundred percent (100%), oil-fired by sixty percent (60%) and other fuels by forty percent (40%). New sources use electrical output data to convert output into heat input for the determination of the baseline. The conversion factor is based on whether the unit is coal-fired or not.

Baseline

The draft language updates baseline heat input information with the most current seven years of data every three years. Under the NO_x SIP Call rule, a new baseline is calculated for each allocation period based on the most recent five years of data. U.S. EPA's model rule did not include a baseline that would be updated over time; retired units would continue to receive allowances forever and existing units would have allocations based on data that is eventually decades old. The draft rule provides that the most recent operational data would be used for calculations and that a retired unit would eventually stop receiving allowances.

New Unit Set-aside

The draft rule includes a new unit set-aside for both the annual and ozone season trading rules. The ozone season program new unit set-aside uses the same amount of allowances as the model rule, that is five percent (5%) of the Phase I trading budget and three percent (3%) of the Phase II trading budget. Draft language for the annual trading program includes a new unit set-aside equal to four percent (4%) and two percent (2%) of the Phase 1 and II trading budgets, respectively. The one percent (1%) difference from the model rule would be used to provide annual NO_x allowances for an energy efficiency and renewable energy (EE/RE) set-aside to be paired with the current ozone season EE/RE set-aside in the NO_x SIP Call.

Compliance Supplement Pool

The draft rule includes a compliance supplement pool (CSP) for allocation of early reduction credits or allowances based on need for sources that may have unique issues complying with the 2009 implementation deadline. The CSP provision included in the draft rule differs from the one included in the NO_x annual trading program model rule by providing a mechanism for IDEM to reserve allowances for all eligible sources in advance to provide some certainty to sources regarding the amount of allowances that would be available to them for early reduction credits. IDEM developed this language with input from stakeholders and includes two (2) options for the definition of an eligible unit. The first option under 326 IAC 24-1-8(g)(1)(A)(ii) includes units that have or will have control equipment installed prior to December 31, 2008, that can achieve the unit's applicable acid rain NO_x emissions rate without averaging. The second option under 326 IAC 24-1-8(g)(1)(A)(ii) includes units that have or will have post-combustion control equipment such as, but not limited to, selective non-catalytic reduction or selective catalytic reduction, installed prior to December 31, 2008, that is capable of reducing NO_x emissions below the unit's applicable acid rain NO_x emission rate limitation without using averaging. IDEM invites comments on both options.

Alternative option for compliance supplement pool to provide incentives for co-benefit mercury reduction

Another option that IDEM is considering and on which we request comment is using the CSP to provide incentives for control configurations that maximize mercury reduction co-benefits. The goal of this option is to encourage new SCR installation and year-round SCR operation at units that have or will have electrostatic precipitator (ESP) and flue gas desulfurization (FGD) in 2007 and 2008, since this control configuration can achieve up to ninety percent (90%) mercury reduction. The draft rule language does not contain this option as IDEM is still exploring ways to implement this type of incentive. With the intent of providing additional NO_x allowances to sources that obtain optimal mercury reductions and still having enough NO_x allowances to also encourage early NOx reductions through year round operation of SCR, IDEM is proposing two methods. These alternative mercury incentive options for the CSP language could be integrated with the CSP allowance reservation method discussed in the previous paragraph.

Alternative #1: The first method is to create two pools for the early reduction credit (ERC) portion of the CSP, pool #1 for units with ESP, SCR, and FGD control configurations and pool #2 for post-combustion NO_x control equipment such as, but not limited to, SCR or selective non-catalytic reduction (SNCR). A larger number of allowances would be in pool #1. Under this alternative, sources would still have the opportunity to reserve a set number of allowances, but the larger number of allowances in pool #1 would make more CSP allowances available for sources that have control configurations that maximize mercury reductions. Alternative 2: Another method is to have one pool of allowances and use a ratio to award additional allowances for units with ESP, SCR, and FGD. At the October 18, 2005, workgroup meeting IDEM had proposed this type of method including a ratio of up to six (6) allowances for each ton of NO_x reduction for this type of control configuration. IDEM acknowledges that a ratio of 6:1 does create issues concerning the ability of a few sources to obtain a large number of allowances at the expense of other sources that may be reducing NO_x emissions, but are not using the same types of control configurations. IDEM invites suggestions for more appropriate ratios, such as 1.5:1 or 2:1. The issue of whether the ratio is applied during the allowance reservation process or when determining the actual number of allowances to be awarded must also be decided.

Energy Efficiency/ Renewable Energy Set-aside

The energy efficiency/renewable energy (EE/RE) set-aside program of the current NO_x SIP Call rule was not included in the U.S. EPA model rule, but is a option that states can include in their CAIR rules. The preamble for the CAIR rule at 70 FR 25279 discusses NO_x allocation methodology elements for which states have flexibility, including the use of set-asides for

energy efficiency, development of integrated gasification combine cycle, for renewables, or for small units. The EE/RE set-aside is a separate pool of NOx allowances that IDEM can allocate to EE/RE projects to provide incentives for their growth. The program is based on a two-step process. Applicants apply for allowances in one (1) year and the actual transfer of allowances occurs after the following summer. For the ozone season EE/RE set-aside, IDEM proposes that half of any unallocated allowances will be retained by the state to fund an EE/RE grant program for smaller scale projects and the other half will be returned to existing large affected units (non-EGUs) on a pro rata basis. The annual EE/RE set-aside would be set up the same, except that half of the unallocated allowances will be returned to electric generating units, since the annual EE/RE set-aside comes from the new unit set-aside for electric generating units (one percent (1%) of the new unit set-aside). Initial conversations with U.S. EPA have indicated that IDEM will be able to include this set-aside in this rulemaking, but further discussions with U.S. EPA are needed. IDEM seeks comment on this proposal and other possible improvements or changes to the EE/RE set-aside. Further discussions are also necessary to determine the details of administering such a program within state government.

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. All changes to the CAIR model rules included in the draft language are modifications allowed under the federal CAIR rule.

Potential Fiscal Impact

This rulemaking will exceed the $500,000 threshold requiring a fiscal impact analysis (FIA) under IC 4-22-2-28 and IDEM is currently preparing this analysis with input from stakeholders. The FIA will include the annual economic impact after full implementation of the rule, as required by statute. The FIA will also include start-up costs and capitol expenditures to the extent that information is available. Those entities affected by this rule are encouraged to contact IDEM to provide pertinent fiscal impact information.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup, referred to as the "Utility Rules Workgroup" is for both this rulemaking and the Clean Air Mercury Rule (CAMR)/Indiana mercury rule. The workgroup is made up of a variety of stakeholders and convened by IDEM, Office of Air Quality staff. If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Susan Bem, Rules Development Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana). Please provide the following contact information: your name, phone number and email address, if applicable, and where you can be contacted. The public is encouraged to participate in the workgroup process. The workgroup holds monthly meetings in Indianapolis, Indiana. The date for the December meeting has not been scheduled yet, please call Susan Bem (317) 233-5697 or (800) 451-6027 (in Indiana) for meeting information or check the IDEM calendar at: http://www.in.gov/serv/eventcal?PF=idem&Clist=16_153_154_155_156.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from June 1, 2005, through July 5, 2005, 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:

Indiana University - University Office of Environmental, Health and Safety Management (IU)
Improving Kids' Environment (IKE)
Indiana Energy Association (IEA)
Indiana Michigan Power Company, dba American Electric Power (AEP)
Indianapolis Power & Light Company (IPL)
Citizens Thermal Energy (CTE)
Purdue University (PU)
Northern Indiana Public Service Company (NIP)
GE plastics Mt. Vernon, Inc. (GE)
Dominion (DM)
Valley Watch, Inc. (VWI)
Indiana Office of Utility Consumer Counselor (IOUCC)
United Mine Workers of America, AFL-CIO (UMWA)
Indiana Municipal Power Agency (IMPA)

Following is a summary of the comments received and IDEM's responses thereto:

General

Comment: IDEM should complete the CAIR rulemaking as quickly as possible. (IKE) (VWI)

Response: IDEM agrees and is proceeding with the CAIR rulemaking on an expeditious schedule.

Comment: IDEM should adopt the Clean Air Interstate Rule (CAIR) as finalized by U.S. EPA. (AEP) (IMPA)

Comment: Indiana's adoption of the model rule would provide for quick and easy approval by U.S. EPA, which would provide sources the maximum amount of time to develop compliance plans. Also, adopting the model rule will allow Indiana sources to reduce emissions in the most cost effective manner by participating in the regional cap-and-trade allowance program. (IEA) (IU) (IPL) (CTE) (PU) (NIP) (DM)

Comment: Affected parties have had ample opportunity to comment on U.S. EPA's model rule and going through that process again would be duplicative and unproductive. (IU) (IPL) (CTE)

Comment: Adoption of the model rule will ensure consistency across state lines and provide maximum flexibility for compliance. (DM)

Response: IDEM is proposing to adopt the CAIR model rules with modifications so that Indiana sources can participate in the CAIR cap and trade program administered by U.S. EPA. Flexibilities included in the CAIR model rule allow Indiana to

include, as full trading partners, all trading sources affected by the NO_x SIP Call in the ozone season CAIR NO_x cap and trade program; to develop different NO_x allocation methodologies, provided allocation information is submitted to U.S. EPA in the required time frame; and to choose whether or not to include the opt-in provision in the model rule that allows individual units to opt-in to the cap and trade program.

Comment: The Utility Group (fourteen (14) utility members of the Indiana Energy Association and three (3) non-member utility companies) favors adoption of the federal CAIR rule, including all of the state flexibility provided for in the federal CAIR rule. The final version of the CAIR and Clean Air Mercury Rule (CAMR) will require companies that are part of the Utility Group to invest as much as three billion dollars ($3,000,000,000) for additional emission controls at the generating stations subject to these rules, with concomitant increases in the cost of electricity provided to their customers. The goal of the Utility Group is that any capital investments result in achievement of air quality goals that require such investment. (IEA)

Response: See previous response. IDEM will be developing a fiscal analysis on the proposed rule as well and welcomes comments on cost estimates.

Comment: Power costs, which are currently below the national average for Indiana consumers, will increase due to the cost of CAIR required control, and such increases should be consistent with control costs throughout the region. Adopting the budgets in the CAIR rule will insure that Indiana power consumers receive the benefit of consistent regional and national control strategies and, as a result, provide Indiana power generators the same consistency in control costs. (IEA)

Comment: Sources have and will continue to do a lot to reduce emissions of NO_x and SO_2. The commenter has spent one hundred and seventy-five million dollars ($175,000,000) in NO_x control to comply with the NO_x SIP Call rule and is in the process of reducing sulfur dioxide emissions by installing a new scrubber and upgrading existing scrubbers in advance of the 2010 deadline for SO_2. (IPL)

Response: IDEM is proposing to adopt the budgets in the CAIR rule.

Comment: High levels of ambient ozone and fine particles, which occur throughout Indiana, pose a serious health threat to Indiana children. Ozone and fine particle pollution can exacerbate asthma and other respiratory illnesses, and cause other physical symptoms and discomfort. Particles can include toxic chemicals that pose additional, and in some cases less well understood, threats to children's health. Although there are many factors that influence asthma, elevated levels of air pollutants are a known asthma trigger. In 2002, the Indiana State Department of Health estimated that three hundred and forty thousand (340,000) Indiana adults had asthma, and that fifteen (15%) percent of households had one or more children diagnosed with asthma. (IKE)

Response: IDEM agrees that ozone and fine particle pollution can exacerbate asthma and other respiratory illnesses. The CAIR rule will help bring Indiana counties into attainment with the health-based air quality standards for ozone and fine particulate matter.

Comment: Evansville and the surrounding area, is located near the center of the largest concentrations of coal fired power plants in the world. A 1998 study by the Partnership for Healthcare Information, a business and academically based group, found that a child from nine (9) to thirteen (13) in Evansville was five times more likely to have asthma than a kid the same age in Ft. Wayne, a community of nearly identical demographics but no coal fired power plants nearby. CAIR, as proposed by U.S. EPA, should be helpful in reducing high levels and incidence of diseases that are experienced in southwest Indiana, west Kentucky, and southeast Illinois. (VWI)

Response: IDEM agrees that federal CAIR will have a public health benefit and is proposing to adopt the rule expeditiously.

Comment: Although the commenter supports discussion of both this rule and the mercury rule in the same workgroup, IDEM should push ahead with this rule, even if additional time is needed for the mercury rule. (IKE)

Response: Because of the additional discussion that the mercury rule needs, the mercury rulemaking will be not be on the same schedule as the CAIR rulemaking.

Comment: The commenter is skeptical of proposed "trading" systems where, theoretically, marketable credits can be earned by polluters who cut their pollution to a degree greater than they are "allowed" and then sell those credits by auction or other methods to polluters who fail to achieve the reductions to bring them into compliance with the allowances they have been allocated. The skepticism is in three main areas: having allowances implies and creates a certain "right" to pollute, trading has and will continue to create pollution "hot spots" where significant polluters can decide to forego reducing their plants emissions and buy credits, and trading "caps" must be adequately restrictive that no region is allowed to remain out of compliance with any of the NAAQS. If any kind of trading program is to eliminate the possibility of "hot spots," the physical area where the trades can take place must be no greater than regional in size. (VWI)

Response: Although sources can forego emissions reductions at one plant by buying allowances from another plant, the goal of this rule is to reduce overall emissions in the CAIR region and to eliminate upwind states' significant contribution of transported pollution to downwind states. Additional control programs other than CAIR may be needed to achieve attainment in all Indiana counties and downwind states.

Comment: The commenter is skeptical of future workgroups to deal with CAIR. Past experience in these so-called stakeholder meetings have indicated that regardless of the negotiations and agreements that result from group dialogue, the bottom line is almost always that when the group has spoken, the polluters will then meet privately with the decision makers and strike whatever deal they wanted in the first place. (VWI)

Response: IDEM has a very open process with the CAIR workgroup and will continue to have discussions and share

information with all stakeholders.

CAIR and Attainment

Comment: The commenter does not support adopting CAIR with modifications to bring all Indiana counties into attainment. (IU) (IEA) (AEP) (PU) (NIP) (DM) (IMPA)

Comment: Broadening this rulemaking to include additional sources to address state implementation plan (SIP) attainment issues will delay this rulemaking when Indiana should be moving on a fast track to avoid being brought into U.S. EPA's federal implementation plan (FIP) for CAIR. At this time, there are multiple sets of modeling for non-attainment areas that contradict each other and the time needed to work through the modeling will delay this rulemaking. (IU) (IEA) (PU)

Comment: The commenter supports U.S. EPA's position that the CAIR rulemaking does not require states to prepare an attainment SIP to comply with CAIR and the attendant emission reductions are not designed to result in attainment of the National Ambient Air Quality Standards (NAAQS). IDEM should separate the attainment SIP process from the CAIR process, even though the rulemaking milestones in the two (2) rules may be close. $PM_{2.5}$ nonattainment is a residual issue after implementation of CAIR. Numerous steps will be required by the states to determine the optimal mix of SO_2 and NO_x reduction for the ozone and $PM_{2.5}$ standards. These requirements are driven by EPA policy and guidance documents for each NAAQS that are not yet final at this time. (IEA)

Comment: Beyond-CAIR EGU reductions of SO_2 and NO_x may not impact $PM_{2.5}$ concentrations sufficiently to achieve attainment in any residual nonattainment areas. The reactive chemistry of $PM_{2.5}$ precursors is both complex and not well enough understood. The $PM_{2.5}$ particle composition may well be driven by mobile sources in winter. Another source mix may drive the $PM_{2.5}$ composition in summer. Until additional speciated monitoring data is available, it is premature to require beyond-CAIR SO_2 or NO_x reductions from EGUs. (IEA)

Comment: CAIR reductions are designed to move areas toward attainment and the significant reductions of CAIR will move much of Indiana towards attainment. Also, the positive impacts of the reductions in NO_x for the ozone season NO_x SIP Call program are yet to be fully realized. For example, a number of selective catalytic reduction (SCR) units are commencing operating in Indiana and other units will be installed. (IEA)

Comment: IDEM should adopt the U.S. EPA version of CAIR. U.S. EPA has already done a rigorous analysis of EGUs to determine which can accept retrofit controls and how fast control can be installed including the availability of labor, materials, and replacement power. IDEM would have to do the same kind analysis to adopt something different than CAIR and the end result may be the unintended consequence of eliminating Indiana sources from participating in the U.S. EPA cap and trade program and increasing cost. (IEA)

Comment: Unit specific emission limits defeat the purpose of a cap and trade program. (IEA) (PU)

Comment: Grid reliability is a concern with any implementation approach that requires more reductions than are required by the federal CAIR rule. Strategies such as "EGU1" and "EGU2" described in LADCO white papers for EGUs will result in the installation of control on very small units, which is technically infeasible, and will result in retirement of these units. Replacement power may not be available and the existing transmission grid may not be able to accommodate the increased importation of power. (IEA)

Comment: The commenter does not support using this rulemaking to explicitly generate an attainment strategy for Indiana's $PM_{2.5}$ and ozone nonattainment counties, but to use it as a starting point for detailed analysis of Indiana's $PM_{2.5}$ and ozone nonattainment areas to determine what focused local control programs would be necessary to reach attainment. Although a nonattainment area analysis may determine that emissions reductions on specific utility facilities beyond the reductions required under CAIR are necessary they should be part of a separate rulemaking. (AEP)

Comment: The purpose of CAIR is to provide the level of SO_2 and NO_x reductions U.S. EPA has determined are needed to adequately address the regional contribution to downwind nonattainment areas from EGUs. If Indiana still has nonattainment counties after CAIR then IDEM should address these on a case-by-case basis while evaluating the impact from all types of sources on local nonattainment areas. (DM)

Comment: Lake Michigan Air Directors Consortium (LADCO) modeling clearly demonstrates that beyond CAIR controls in the utility sector have no meaningful impact on the modeled ozone levels in Lake and Porter Counties (the only remaining ozone nonattainment area following the implementation of CAIR) and that only one monitor modeled in nonattainment for $PM_{2.5}$ following implementation of CAIR. Also, it is interesting to note that targeted volatile organic compounds (VOC) reductions only in the ozone nonattainment areas (identified as strategy R2S3A) achieved $PM_{2.5}$ attainment for this one monitor and that further expanding these controls outside of the ozone nonattainment counties or adding primarily additional SO_2 reductions in the utility sector did not further reduce the modeled $PM_{2.5}$ concentrations in 2009. (AEP)

Comment: LADCO's proposals, known as EGU1 and EGU2, have potential adverse effects on generation unit shutdowns, electric reliability, and coal markets. The levels of SO_2 emission control contemplated by the LADCO EGU White Paper are inconsistent with the continued utilization of the majority of coal produced in Indiana and Illinois, and with all Ohio coal, even with the assumed ninety-five percent (95%) control of SO_2 emissions by wet flue gas scrubbing technologies. A recent study of the potential economic impacts of the control measures proposed in the LADCO EGU White Paper supports the commenter's concerns about the risks of premature coal plant retirements and large-scale fuel switching to western coals. Based on the estimates in this study, Indiana could lose as much as twenty-two (22) million annual tons of coal production under the EGU2 control proposal, requiring units to meet an emission rate limit of one-tenth pound of SO_2 per million British thermal units (0.10 lb SO_2/MMBTU). EGU1, requiring an emission limit

of fifteen-hundredths pound of SO_2 per million British thermal units (0.15 lb SO_2/MMBTU), could result in the loss of nearly nineteen (19) million tons of annual Indiana coal production. In 2003, Indiana's total coal production was thirty-five million and four hundred thousand tons (35,400,000), according to the U.S. Department of Energy's Energy Information Administration. (UMWA)

Response: The draft language in this notice does not contain additional emission reductions beyond those contained in the CAIR budget for Indiana. At this time IDEM is still evaluating the available modeling information and waiting for additional, more refined modeling to determine if Indiana will have areas in nonattainment for the 8-hour ozone standard or fine particles ($PM_{2.5}$) following implementation of CAIR. Based on this work IDEM may determine in the future that additional reductions from specific sources are necessary to bring Indiana counties into attainment. When evaluating options for additional reduction IDEM will consider the issues raised by the commenters: chemistry of $PM_{2.5}$, grid reliability, technical feasibility of LADCO options "EGU1" and "EGU2" for very small units, impact of "beyond CAIR" controls on ozone levels in Lake and Porter Counties, and the impact on the Indiana coal market of additional controls.

Comment: If SIP quality modeling for Indiana's attainment demonstration shows residual nonattainment, additional reductions beyond the federal CAIR rule should be considered in this rulemaking. (IKE)

Response: IDEM will consider additional reductions from EGUs as well as other potential sources should be considered if additional reductions are needed to demonstrate attainment.

Comment: U.S. EPA is currently reviewing the fine particle health standard. All information available to date about U.S. EPA and the Clean Air Scientific Advisory Committee's review of health information indicates that particulate levels lower than the current health standard cause adverse health effects and the agency is very likely to make either the annual or daily standard, or both, more strict. Setting the budget tighter than may be needed for the current health standard, in anticipation of further reductions needed in a few years, may be a more cost-effective approach. (IKE)

Comment: U.S. EPA has calculated that the benefits to be achieved by CAIR will be twenty-five (25) times as great as the costs to implement it. Further reductions could be required and the benefits of the rule would still outweigh the costs. (IKE)

Response: IDEM is tracking U.S. EPA's review of the fine particle health standard, and will consider that in its SIP planning efforts.

Non-EGUs

Comment: Many owners and operators of non-electric generating unit (EGU) boilers are making investments at their facilities to meet the requirements of 40 CFR 63, Subpart DDDDD (Industrial Boiler MACT) by the September 13, 2007, compliance date. These investments have included significant amounts of capital and many years of planning. If the Indiana Clean Air Interstate Rule (CAIR) were to apply also, compliance plans for the Industrial Boiler MACT would be obsolete even before they had been implemented. This is especially a problem for state educational institutions that have a lengthy process to secure funds from the state legislature and the Governor. (IU) (CTE) (PU)

Comment: The commenter does not support obtaining emissions reductions from non-EGUs within the CAIR rulemaking. U.S. EPA has already determined that the most cost-effective manner to achieve emissions reductions is by controlling emissions from power plants. While there are U.S. EPA staff papers in the docket for the CAIR rulemaking that allude to the availability of cost-effective controls for industrial boilers, these staff papers are based on model boilers using estimated cost factors. Turndown ratios (the ratio of anticipated peak loads and anticipated low load conditions) can be as high as ten to one (10:1); fuels consumed by industrial boilers are often purchased on the spot market and as such may vary in quality; and the physical size, configuration, and location of the boilers may mean that certain control devices are infeasible for use at a plant. These and others factors would need to be analyzed before IDEM could start rulemaking to include non-EGU boilers. IDEM should not pursue this option without data that indicates a positive environmental benefit at a reasonable cost as required under IC 13-14-8-4(6). Also, the inclusion of non-EGUs in Indiana would impact the ability of Indiana sources to participate in the U.S. EPA administered allowance trading program. (IU) (CTE)

Comment: The commenter does not support inclusion of non-EGUs in the Indiana CAIR rule. In U.S. EPA's 2004 document, "Identification and Discussion of Sources of Regional Point Source NO_x and SO_2 emissions other than EGUs (U.S. EPA [CAMD/OAQPS] Technical Support Document, January 2004," U.S. EPA concludes the following regarding the impact and feasibility of additional control installation on industrial and commercial boilers:

"...As with SO_2 controls, there are a number of uncertainties associated with the NO_x estimates for this sector (industrial and commercial boilers)."

The reason for these uncertainties is that U.S. EPA does not have actual capacity factor data for all the sources in this sector and has to estimate capacity factors to estimate costs. Such estimates are difficult for this sector because of the wide range of operating characteristics for these sources. Second, space constraints have the potential to complicate or make installation of SCR technology infeasible. Third, U.S. EPA's current inventories do not take into account emission rates based on full implementation of the NO_x SIP call. Lastly, U.S. EPA does not have a good understanding of the costs and operational effects of integrating post combustion SO_2 and NO_x control strategies for these sources. (PU)

Comment: The commenter opposes IDEM not adopting the federal CAIR rule and instead obtaining reduction of SO_2 and NO_x emissions from either non-EGUs or a combination of EGUs and non-EGUs. U.S. EPA has expressly concluded, for the purposes of the CAIR rule, that it lacks information that SO_2 and

NO_x controls on non-EGUs would be cost-effective. In addition, the commenter provided data and analysis to support its claim that SO_2 and NO_x controls on their fossil fuel-fired combustors located at the Mt. Vernon, Indiana, plant would not be cost-effective. (GE)

Comment: Inclusion of other non-EGU sources in the Indiana CAIR rulemaking would impact the ability of Indiana sources to participate in the U.S. EPA regional cap and trade program and increase the cost of compliance for all Indiana sources. (IEA) (NIP) (DM)

Comment: The commenter does not fundamentally object to obtaining additional reductions from sources other than EGUs, but the proposal is too vague to provide any meaningful comment. (IMPA)

Response: IDEM is no longer considering meeting the CAIR annual budgets by obtaining emissions reductions from non-EGUs or a combination of non-EGUs and EGUs, since Indiana sources would not be able to participate in the U.S. EPA administered trading program, and no interested parties have supported this option.

Comment: Indiana must preserve the ability of non-EGU boilers affected by the NO_x SIP Call to participate in the ozone season regional trading program. (CTE) *Comment:* The CAIR model rule clearly states that state plans containing trading programs substantively different from the model rule may not be approved by U.S. EPA. If Indiana would not be able to participate in the trading program, the impact on non-EGU NO_x SIP Call sources would be particularly extreme as the market for these sources would consist of only a few sources. (PU)

Response: The draft rule language in this notice for the CAIR ozone season trading program includes non-EGUs currently covered by 326 IAC 10-4. This will ensure that non-EGUs in the current NO_x SIP Call rule (326 IAC 10-4) will continue to be able to trade with EGUs as they currently do under the NO_x SIP Call. This provision will not require Indiana to obtain additional reductions from non-EGUs. The total budget for these units is the same as it is currently under 326 IAC 10-4. The U.S. EPA will no longer operate the NO_x SIP Call trading program after the 2008 ozone season and the CAIR ozone season NO_x trading program will replace the NO_x SIP Call trading program. IDEM is reviewing the existing allocations and will recommend whether changes are necessary for the CAIR program. In addition, the CAIR NO_x ozone season trading program provides incentives for early emissions reductions by allowing the banking of pre-2009 NO_x SIP Call allowances into the CAIR NO_x ozone season trading program.

Comment: The Indiana CAIR rulemaking should regulate EGUs and large boilers. Regional reductions of NO_x and SO_2 is a very effective approach to reducing ozone levels and the same is expected for SO_2 in reducing fine particle levels. While Indiana maintains air quality monitors only in certain counties, it is reasonable to believe, based on modeling, that unmonitored regions of Indiana also have air quality that approaches or exceeds health standards under certain weather conditions. Therefore, reductions from sources whose emissions are regional will improve air quality in areas that are not monitored and in downwind states. (IKE)

Comment: It is important that the Indiana CAIR rule cover all major sources of fine particle pollution. This clearly includes sources like industrial boilers, especially those that continue to burn coal as their source of fuel. ALCOA, Warrick, is an industrial boiler source with almost no controls for NO_x, SO_2, and mercury on some of the units. (VWI)

Comment: Additional reductions could be achieved by requiring large industrial boilers currently covered under the NO_x SIP Call to control their emissions on a year-round basis. The Lake Michigan Air Directors Consortium (LADCO) has evaluated the feasibility and costs of several pollution reduction approaches for Industrial, Commercial and Institutional Boilers, Cement Plants and other sources in a series of White Papers. There appear to highly cost-effective technologies available to reduce SO_2 and NO_x from these types of sources. (IKE)

Response: IDEM may consider further reductions of SO_2 and NO_x from large industrial boilers as part of an attainment strategy, if necessary. However, non-EGUs cannot be made part of the CAIR NO_x and SO_2 annual trading programs, according to the federal rule. ALCOA, Warrick, has recently announced plans to install scrubbers on specific units to reduce SO_2 emissions.

Opt-in Provision

Comment: The commenter supports including an opt-in program in Indiana's CAIR rulemaking. An opt-in program would still allow Indiana electric generating units (EGUs) to participate in the regional allowance-based trading program while providing the state with additional, voluntary reductions. (IU) (IEA) (CTE) (PU)

Comment: Allowing sources to opt-in to the CAIR program should be allowed so long as they do not jeopardize the ability of Indiana utility sources to participate in the U.S. EPA cap and trade program. (AEP)

Response: IDEM has included opt-in language, including the alternative opt-in approach, from the CAIR model rules for each of three (3) CAIR trading programs.

Allocation Methodology

Comment: IDEM should use heat input for the NO_x allowance allocations made under CAIR as is currently being done for the NO_x SIP Call program under 326 IAC 10-4. The commenter is opposed to the use of output for allowance allocation. (AEP)

Response: IDEM has recommended the CAIR model rule allocation methodology that uses an heat input basis for existing units and an output basis for new units.

Comment: The commenter recommends that IDEM consider maintaining the current allocation methodology developed for implementing the current NO_x SIP Call ozone season budget trading program. The NO_x SIP Call approach provides for equitably allocated allowances and encourages and rewards energy efficiency and clean generation. Energy efficiency and renewable energy set-asides could be used in both the annual and ozone season trading programs. Allocation of NO_x allowances in CAIR by the same methods will help minimize transi-

tion issues between the current and future CAIR trading programs. (NIP)

Response: IDEM proposes to use the CAIR model rule allocation methodology as a base and then modify some aspects of the CAIR model rule allocation methodology to be consistent with the NO_x SIP Call rule. Some items in the draft rule language that are consistent with the NO_x SIP Call approach but different from the CAIR model rule are: use of rolling heat inputs versus a set time frame of heat inputs, allowances allocated every three (3) years for three (3) years worth of allocations versus annual allocations updated to include new sources only six (6) years in advance of the allocation year, and inclusion of an energy efficiency program.

Comment: The commenter does not see how IDEM could change the allocation of SO_2 allowances since the SO_2 portion of CAIR retains the congressionally established Acid Rain allowances from Title IV of the Clean Air Act and only uses a multiplier value to increase the surrender ratio for these allowances under CAIR. (AEP)

Response: IDEM agrees and has not included an allocation section in the rule language for the CAIR SO_2 trading program.

Comment: The commenter does not believe the CAIR SO_2 allowance allocations, which are based on the Acid Rain program allowance allocations, for either new source performance standard (NSPS) units or Acid Rain bonus units are highly cost effective as applied in the CAIR. Since the commenter has eight (8) of the eleven (11) coal-fired generation units in Indiana covered by either the Acid Rain bonus or the NSPS units provisions, the commenter is unduly negatively impacted by the CAIR SO_2 allocation. These low-emitting units suffer a greater impact from the CAIR because they do not have the margin of reduction that is available to higher-emitting units. Therefore, the lower-emitting units will eventually reach the point of being incapable of complying by installing technology, and will be forced to the market, which is contrary to the policy of encouraging emissions reductions. (NIP)

Response: IDEM is not able to change the SO_2 allocations since they are established under the Clean Air Act.

Comment: Under the Indiana NO_x SIP Call program 2009 NO_x allowances have already been allocated and in many instances traded on the market. (IEA) *Comment:* IDEM must work with U.S. EPA to reconcile the 2009 allocations from the current NO_x budget trading program with the future allocation under the CAIR for the 2009 ozone season. (NIP)

Response: IDEM is discussing this issue with U.S. EPA and, based on initial discussions, has a proposal that is included in draft rule language. For the NO_x ozone season trading rule, the 2009 allocations submitted to U.S. EPA under 326 IAC 10-4-9 will stay in effect for the 2009 ozone season under CAIR.

Comment: Allocations should be updated periodically as is done in the NO_x SIP Call. The U.S. EPA model CAIR trading method provides a workable program to transition from a fixed phase 1 allocation to an annual updating methodology. This will provide an opportunity to react to the ongoing evolution of the power generation market and to avoid creation of an additional economic barrier to the installation of newer, potentially cleaner and more efficient units. (NIP)

Response: IDEM has included rule language from the CAIR model rule that provides for updating on a three (3) year basis.

Comment: If IDEM does not utilize the current NO_x SIP Call ozone season budget trading program allowance allocation methods, then IDEM should consider allocating allowances on an output basis or, at a minimum create a set-aside to encourage development and implementation of clean efficient generation methods starting in 2010. (NIP)

Response: In the draft rule IDEM has not allocated allowances for existing sources on an output basis, but has included an output based allocation method for new units and has included the energy efficiency and renewable energy set-aside program from the NO_x SIP call in the both the NO_x ozone season and annual trading programs. The background section of this notice contains additional information on the energy efficiency and renewable energy set-aside program included in the draft rule.

Comment: IDEM should not use heat input methodology for peaking units because such a methodology penalizes facilities that have not operated at baseload capacity factors. Instead, IDEM could allocate allowances to these facilities based on a percent reduction from the NO_x SIP Call allowances. For example, they could be allocated eighty percent (80%) of their NO_x SIP Call allowances. Or if allowances were to be allocated based on heat input values, IDEM should consider a more representative historical period than 2000-2004, when peaking units did not operate much due to cool weather. If basing allocation on heat input values from 2000-2004, the commenter would receive one (1) ton of annual NO_x allowances for each of its four units. This is a reduction of about ninety percent (90%) from what it received for 2007-2009 under the Indiana NO_x SIP Call, which only covers the ozone season. (IMPA)

Response: IDEM has expanded the number of heat input years to be included in the initial allocation and subsequent allocations to address concerns with the representativeness of certain years. The initial allocation will be based on the average of the three (3) highest heat input years from 1998-2004.

Comment: Any allocation methodology should use the oil correction factor to make sure that oil is not eliminated as a fuel possibility. The ability to use fuel oil is important for reliability when natural gas is not available. (IMPA)

Response: The model rule for the NO_x ozone season and the annual programs includes an adjustment factor of one hundred percent (100%) for coal-fired units, of sixty percent (60%) for oil-fired units, and of forty percent (40%) for all others. "Oil-fired units" is defined as units combusting fuel oil for more than fifteen percent (15%) of the annual heat in a specified year and not qualifying as coal-fired. The draft rule includes fuel factors to adjust the baseline heat inputs with respect to allowances allocations, in a slightly different format than the model rule. The draft rule for both of the CAIR NO_x trading programs (326 IAC 24-3-8(c)) includes a fuel factor of one hundred percent (100%) for coal-fired units and sixty percent (60%) for all

others. This provides some relief to gas units that need to use oil when required for emergencies.

Comment: The commenter requests that units built in 2004 and later receive some allocations, even though they had no, or minimal, heat input in 2000-2004. (IMPA)

Response: Units that don't receive allowances as an existing source will receive allocations from the new source set-aside.

Energy Efficiency Incentives

Comment: Indiana's NO_x SIP Call rule provided incentives to encourage energy efficient projects or ones that use renewable fuels. Although these incentives have not been widely used to date, this rulemaking should maintain and enhance these provisions. Incentives should also be considered for sources that choose to comply with their NO_x and SO_2 reduction requirements in ways that maximize the mercury reductions that will be achieved as co-benefits. (IKE)

Response: The draft rule includes the energy efficiency program from the NO_x SIP Call rule with some modifications to create a grant program to fund smaller projects in the program. IDEM is still working out all the details of this program. There is also a compliance supplement pool provision in the annual trading program for NO_x to encourage early reductions. IDEM has requested comment in the background section on an alternative option for the compliance supplement pool that would provide additional incentives for sources maximizing mercury reductions.

Placement in IAC

Comment: It may be appropriate to place the CAIR and CAMR rules in the Article 21 for Acid Rain. Since a significant portion of the general provision language is common between the CAIR SO_2, NO_x annual, and NO_x ozone season rules and CAMR, IDEM may be able to develop a rule that first addresses the general provisions, then separate rule for specifics of each program. (IEA)

Response: IDEM has placed the three (3) model trading rules for CAIR in a new article, Article 24, with a new rule for each trading program. IDEM agrees that there are many provisions in the trading programs that are the same and may consider a format that combines portions of each trading program and then different parts for portions of each trading program that are different in a later version of this rulemaking.

Comment: IDEM should consolidate the CAIR and CAMR rules into one location in the Indiana Administrative Code. It would be useful to have separate sections or subsections, as appropriate, within the consolidated location to facilitate differentiation between mercury specific requirements from those of the CAIR applying to NO_x and SO_2. (NIP)

Response: IDEM has placed the three (3) model trading rules for CAIR in a new article, Article 24, with a separate rule for each trading program. CAMR will also be placed Article 24.

Comment: IDEM should amend the NO_x SIP Call regulations in 326 IAC 10-4 by pulling out provisions that only address EGUs, leaving intact the rule language necessary to support the non-EGU program. (IEA) (CTE)

Response: States are required to modify their existing NO_x SIP Call rules to reflect the replacement of the NO_x SIP Call with the CAIR ozone season trading program. Since 326 IAC 10-4 for non-EGUs would need to be consistent with the CAIR format for EGUs it is simpler to keep both types of sources in one rule.

Fiscal

Comment: Indiana Code at IC 4-22-2-28 requires IDEM to prepare a fiscal impact statement regarding the impacts of the federal rule as adopted by the state of Indiana. Some utilities have already provided financial impact information to the Indiana Utility Regulatory Commission. The commenter disagrees with U.S. EPA estimates of costs of control and is willing to work with IDEM to prepare a proper financial impact statement. (IEA)

Response: IDEM is preparing a fiscal analysis with input from stakeholders as required by IC 4-22-2-28 and has requested compliance plans from the Indiana Utility Regulatory Commission.

Comment: Even though the cost analysis will rely heavily on the U.S. EPA CAIR cost analysis IDEM should engage the State Utility Forecast Group (SUFG) for input on costs of the Indiana rule. (AEP)

Response: IDEM is working with the State Utility Forecast Group (SUFG) for input on costs of the Indiana rule. The SUFG will provide projections of future electricity rates based on the impact of CAIR.

Comment: IDEM cannot possibly prepare a fiscal impact statement for a rule that requires more emissions reductions than CAIR, or from sources other than EGUs, as required by Indiana Code. The additional analysis and department resources that would be needed are not justified given the analysis already provided by U.S. EPA regarding the CAIR reductions. (IEA)

Response: IDEM is preparing to develop a fiscal analysis that reflects the provisions of the draft rule. This analysis will be updated as changes are made during rulemaking.

Comment: The commenter supports a quality environment in the state; people who pay electric bills in Indiana (and their families) also breathe the air in this state. While environmental quality is important, the commenter asks that IDEM's deliberations on CAIR also consider the effect of higher compliance costs on the consumers of electricity in the state. (IOUCC)

Response: IDEM is working with the SUFG to prepare a fiscal impact statement as required by IC 4-22-2-28.

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:

#05-117(APCB)CAIR Rule
Susan Bem Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue

Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the 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 January 3, 2006.

Additional information regarding this action may be obtained from Susan Bem, Rules Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 10-4-16 IS ADDED TO READ AS FOLLOWS:

326 IAC 10-4-16 Sunset

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) Section 9(b)(1)(C) of this rule shall sunset on December 30, 2005.

(b) All other provisions of 326 IAC 10-4-1 through 326 IAC 10-2-14 shall sunset on December 31, 2008. *(Air Pollution Control Board; 326 IAC 10-4-16)*

SECTION 2. 326 IAC 24 IS ADDED TO READ AS FOLLOWS:

ARTICLE 24. NITROGEN OXIDES (NO_X) AND SULFUR DIOXIDE (SO_2) TRADING PROGRAMS

Rule 1. Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program

326 IAC 24-1-1 Applicability

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

Sec. 1. (a) This rule establishes an annual NO_X emissions budget and annual NO_X trading program. The following units shall be clean air interstate rule (CAIR) NO_X units, and any source that includes one (1) or more such units shall be a CAIR NO_X source, and shall be subject to the requirements of this rule, except as provided in subsection (b):

(1) Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts producing electricity for sale.

(2) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under subdivision (1), is not a CAIR NO_X unit begins to serve a generator with nameplate capacity of more than twenty-five (25) megawatts producing electricity for sale, the unit shall become a CAIR NO_X unit on the date on which it first serves such generator.

(b) Units that meet the requirements set forth in subdivisions (1), (2), or (3) shall not be CAIR NO_X units.

(1) Any unit:

(A) qualifying as a cogeneration unit during the twelve (12) month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts, supplying in any calendar year more than one-third (⅓) of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours, whichever is greater, to any utility power distribution system for sale.

If a unit qualifies as a cogeneration unit during the twelve (12) month period starting on the date the unit first produces electricity and meets the requirements of clauses (A) and (B) for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the unit no longer meets the requirements of clause (B).

(2) Any unit commencing operation before January 1, 1985:

(A) qualifying as a solid waste incineration unit; and

(B) with an average annual fuel consumption of nonfossil fuel for 1985-1987 exceeding eighty percent (80%), on a British thermal units basis, and an average annual fuel consumption of nonfossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%), on a British thermal units basis.

(3) Any unit commencing operation on or after January 1, 1985:

(A) qualifying as a solid waste incineration unit; and

(B) with an average annual fuel consumption of nonfossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%), on a British thermal units basis, and an average annual fuel consumption of nonfossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%), on a British thermal units basis.

(4) If the unit qualifies as a solid waste incineration unit and meets the requirements of subdivision (2) or (3) for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the

unit no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(Air Pollution Control Board; 326 IAC 24-1-1)

326 IAC 24-1-2 Definitions

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

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

(1) "Account number" means the identification number given by the U.S. EPA to each CAIR NO_X allowance tracking system account.

(2) "Acid rain emissions limitation" means a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program.

(3) "Acid rain program" means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the U.S. EPA under Title IV of the Clean Air Act and 40 CFR Parts 72 through 78*.

(4) "Allocate" or "allocation" means, with regard to CAIR NO_X allowances issued under section 8 of this rule, the determination by the department or the U.S. EPA of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit or a new unit set-aside and, with regard to CAIR NO_X allowances issued under section 12(j) of this rule, the determination by the department of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit.

(5) "Allowance transfer deadline" means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period, and is the deadline by which a CAIR NO_X allowance transfer must be submitted for recordation in a CAIR NO_X source's compliance account in order to be used to meet the source's CAIR NO_X emissions limitation for such control period in accordance with section 9(i) and 9(j) of this rule.

(6) "Alternate CAIR designated representative" means, for a CAIR NO_X source and each CAIR NO_X unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with sections 6 through 12 of this rule, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_X annual trading program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 trading program. If the CAIR NO_X source is also a CAIR NO_X ozone season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X ozone season trading program. If the CAIR NO_X source is also subject to the acid rain program, then this natural person shall be the same person as the alternate designated representative under the acid rain program. If the CAIR NO_X source is also subject to the mercury budget trading program, then this natural person shall be the same person as the alternate mercury designated representative under the mercury budget trading program.

(7) "Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under section 11 of this rule, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by section 11 of this rule.

(8) "Boiler" means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(9) "Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

(10) "CAIR authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with sections 6 and 12 of this rule, to transfer and otherwise dispose of CAIR NO_X allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

(11) "CAIR designated representative" means, for a CAIR NO_X source and each CAIR NO_X unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with sections 6 and 12 of this rule, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X annual trading program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 trading program. If the CAIR NO_X source is also a CAIR NO_X ozone season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X ozone season trading program. If the CAIR NO_X source is also subject to the acid rain program, then this natural person shall be the same person as the designated representative under the acid rain program. If the CAIR NO_X source is also subject to the mercury

budget trading program, then this natural person shall be the same person as the mercury designated representative under the mercury budget trading program.

(12) "CAIR NO_X allowance" means a limited authorization issued by the department or the U.S. EPA under section 8 or 12(j) and 12(k) of this rule to emit one (1) ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X program. An authorization to emit nitrogen oxides that is not issued under provisions of a state implementation plan (SIP) that are approved under 40 CFR 51.123(o)(1) or 40 CFR 51.123(o)(2)* shall not be a CAIR NO_X allowance.

(13) "CAIR NO_X allowance deduction" or "deduct CAIR NO_X allowances" means the permanent withdrawal of CAIR NO_X allowances by the U.S. EPA from a compliance account in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X units at a CAIR NO_X source for a control period, determined in accordance with section 11 of this rule, or to account for excess emissions.

(14) "CAIR NO_X allowances held" or "hold CAIR NO_X allowances" means the CAIR NO_X allowances recorded by the U.S. EPA, or submitted to the U.S. EPA for recordation, in accordance with sections 9, 10, and 12 of this rule, in a CAIR NO_X allowance tracking system account.

(15) "CAIR NO_X allowance tracking system" means the system by which the U.S. EPA records allocations, deductions, and transfers of CAIR NO_X allowances under the CAIR NO_X annual trading program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

(16) "CAIR NO_X allowance tracking system account" means an account in the CAIR NO_X allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X allowances.

(17) "CAIR NO_X annual trading program" means a multistate nitrogen oxides air pollution control and emission reduction program established in accordance with this rule, 40 CFR 96*, and a state annual CAIR NO_X trading program established pursuant to 40 CFR 51.123* and approved and administered by the U.S. EPA, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

(18) "CAIR NO_X emissions limitation" means, for a CAIR NO_X source, the tonnage equivalent of the CAIR NO_X allowances available for deduction for the source under section 9(i) and 9(j) of this rule for a control period.

(19) "CAIR NO_X ozone season source" means a source that includes one (1) or more CAIR NO_X ozone season units.

(20) "CAIR NO_X ozone season trading program" means a multistate nitrogen oxides air pollution control and emission reduction program established in accordance with this rule, 40 CFR 96*, and a state CAIR NO_X ozone season trading program established pursuant to 40 CFR 51.123* and approved and administered by the U.S. EPA, as a means of mitigating interstate transport of ozone and nitrogen oxides.

(21) "CAIR NO_X ozone season unit" means a unit that is subject to the CAIR NO_X ozone season trading program under 326 IAC 24-3-1 and a CAIR NO_X ozone season opt-in unit under 326 IAC 24-3-12.

(22) "CAIR NO_X source" means a source that includes one (1) or more CAIR NO_X units.

(23) "CAIR NO_X unit" means a unit that is subject to the CAIR NO_X annual trading program under section 1 of this rule and, except for purposes of sections 3 and 8 of this rule, a CAIR NO_X opt-in unit under section 12 of this rule.

(24) "CAIR permit" means the legally binding and federally enforceable written document, or portion of such document, issued by the department under section 7 of this rule, including any permit revisions, specifying the CAIR NO_X annual trading program requirements applicable to a CAIR NO_X source, to each CAIR NO_X unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

(25) "CAIR SO_2 source" means a source that includes one (1) or more CAIR SO_2 units.

(26) "CAIR SO_2 trading program" means a multistate sulfur dioxide air pollution control and emission reduction program established in accordance with this rule, 40 CFR 96*, and a state CAIR SO_2 trading program established pursuant to 40 CFR 51.124* and approved and administered by the U.S. EPA, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

(27) "CAIR SO_2 unit" means a unit that is subject to the CAIR SO_2 trading program under 326 IAC 24-2-1 and a CAIR SO_2 opt-in unit under 326 IAC 24-2-11.

(28) "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

(29) "Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal.

(30) "Coal-fired" means:

(A) except for purposes of section 8 of this rule, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(B) for purposes of section 8 of this rule, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

(31) "Cogeneration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(A) having equipment used to produce electricity and useful thermal energy for industrial, commercial,

heating, or cooling purposes through the sequential use of energy; and

(B) producing during the twelve (12) month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity.

(i) For a topping-cycle cogeneration unit:

(AA) useful thermal energy not less than five percent (5%) of total energy output; and

(BB) useful power that, when added to one-half (½) of useful thermal energy produced, is not less than forty-two and one-half percent (42.5%) of total energy input, if useful thermal energy produced is fifteen percent (15%) or more of total energy output, or not less than forty-five percent (45%) of total energy input, if useful thermal energy produced is less than fifteen percent (15%) of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than forty-five percent (45%) of total energy input.

(32) "Combustion turbine" means:

(A) an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(B) if the enclosed device under clause (A) is combined cycle, any associated heat recovery steam generator and steam turbine.

(33) "Commence commercial operation" means, with regard to a unit serving a generator:

(A) to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in section 3 of this rule.

(i) For a unit that is a CAIR NO_X unit under section 1 of this rule on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a CAIR NO_X unit under section 1 of this rule on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered; the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this clause or clause (B) or (C), as appropriate.

(B) Notwithstanding clause (A), and except as provided in section 3 of this rule, for a unit that is not a CAIR NO_X unit under section 1 of this rule on the later of November 15, 1990, or the date the unit commences commercial operation as defined in clause (A) and is not a unit under clause (C), the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X unit under section 1 of this rule.

(i) For a unit with a date for commencement of commercial operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered; the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in clause (A), this clause, or clause (C), as appropriate.

(C) Notwithstanding clause (A) and except as provided in section 12(f)(10) or 12(i)(4) and 12(i)(5) of this rule, for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under section 12(f)(2) of this rule.

(i) For a unit with a date for commencement of commercial operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered; the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in clause (A) or (B) or this clause as appropriate.

(D) Notwithstanding clauses (A) through (C), for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

(34) "Commence operation" means:

(A) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in section 3 of this rule:

(i) For a unit that undergoes a physical change, other than replacement of the unit by a unit at the same source, after the date the unit commences operation as defined in this clause, such date shall remain the unit's

date of commencement of operation.

(ii) For a unit that is replaced by a unit at the same source, for example, repowered; after the date the unit commences operation as defined in this clause, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in this clause or clause (B), as appropriate.

(B) Notwithstanding clause (A) and except as provided in section 3 of this rule, for a unit that is not a CAIR NO_X unit under section 1 of this rule, but not on the later of November 15, 1990, or the date the unit commences operation as defined in clause (A) and is not a unit under clause (C), the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_X unit under section 1 of this rule.

(i) For a unit with a date for commencement of operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered; the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in clause (A), this clause, or clause (C), as appropriate.

(C) Notwithstanding clause (A) and except as provided in section 12(f)(10) or 12(i)(4) of this rule, for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under section 12(f)(2) of this rule.

(i) For a unit with a date for commencement of operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered; the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in clause (A) or (B) or this clause, as appropriate.

(35) "Common stack "means a single flue through which emissions from two (2) or more units are exhausted.

(36) "Compliance account" means a CAIR NO_X allowance tracking system account, established by the U.S. EPA for a CAIR NO_X source under section 9 or 12 of this rule, in which any CAIR NO_X allowance allocations for the CAIR NO_X units at the source are initially recorded and in which are held any CAIR NO_X allowances available for use for a control period in order to meet the source's CAIR NO_X emissions limitation in accordance with section 9(i) and 9(j) of this rule.

(37) "Continuous emission monitoring system" or "CEMS" means the equipment required under section 11 of this rule to sample, analyze, measure, and provide, by means of readings recorded at least once every fifteen (15) minutes, using an automated data acquisition and handling system (DAHS), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration, as applicable, in a manner consistent with 40 CFR 75*. The following systems are the principal types of continuous emission monitoring systems required under section 11 of this rule:

(A) a flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(B) a nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(C) a nitrogen oxides emission rate, or NO_X-diluent, monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas, CO_2 or O_2, monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(D) a moisture monitoring system, as defined in 40 CFR 75.11(b)(2)* and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(E) a carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor, or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived, and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(F) an oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

(38) "Control period" means the period beginning January 1 of a calendar year, except as provided in section 4(c)(2) of this rule, and ending on December 31 of the same year, inclusive. For the purposes of section 8(h) of this rule, control period means October through April.

(39) "Emissions" means air pollutants exhausted from a

unit or source into the atmosphere, as measured, recorded, and reported to the U.S. EPA by the CAIR designated representative and as determined by the U.S. EPA in accordance with section 11 of this rule.

(40) "Energy efficiency or renewable energy projects" means any of the following implemented in Indiana:

(A) End-use energy efficiency projects, including demand-side management programs.

(B) Highly efficient electricity generation for the predominant use of a single end user, such as combined cycle, combined heat and power, microturbines, and fuel cell systems. In order to be considered as highly efficient electricity generation under this clause, combined cycle, combined heat and power, microturbines, and fuel cell generating systems must meet or exceed one (1) of the following thresholds:

(i) For combined heat and power projects generating both electricity and thermal energy for space, water, or industrial process heat, rated energy efficiency of sixty percent (60%).

(ii) For microturbine projects rated at or below five hundred (500) kilowatts generating capacity, rated energy efficiency of forty percent (40%).

(iii) For combined cycle projects rated at greater than five hundred (500) kilowatts, rated energy efficiency of fifty percent (50%).

(iv) For fuel cell systems, rated energy efficiency of forty percent (40%), whether or not the fuel cell system is part of a combined heat and power energy system.

(C) Zero-emission renewable energy projects, including wind, photovoltaic, solar, and hydropower projects. Eligible hydropower projects are restricted to systems employing a head of ten (10) feet or less or systems employing a head greater than ten (10) feet that make use of a dam that existed before the effective date of this rule.

(D) Energy efficiency projects generating electricity through the capture of methane gas from municipal solid waste landfills, water treatment plants, sewage treatment plants, or anaerobic digestion systems operating on animal or plant wastes.

(E) The installation of highly efficient electricity generation equipment for the sale of power where such equipment replaces or displaces retired electrical generating units. In order to be considered as highly efficient under this clause, generation equipment must meet or exceed the following energy efficiency thresholds:

(i) For coal-fired electrical generation units, rated energy efficiency of forty-two percent (42%).

(ii) For natural gas-fired electrical generating units, rated energy efficiency of fifty percent (50%).

(F) Improvements to existing fossil fuel-fired electrical generation units that increase the efficiency of the unit and decrease the heat rate used to generate electricity, including gas reburning projects that reduce NO_X emissions.

(G) The installation of integrated gasification combined cycle equipment for producing electricity for sale.

Energy efficiency or renewable energy projects do not include nuclear power projects. This definition is solely for the purposes of implementing this rule and does not apply in other contexts.

(41) "Excess emissions" means any ton of nitrogen oxides emitted by the CAIR NO_X units at a CAIR NO_X source during a control period that exceeds the CAIR NO_X emissions limitation for the source.

(42) "FESOP" means a federally enforceable state operating permit issued under 326 IAC 2-8.

(43) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(44) "Fossil-fuel-fired" means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

(45) "Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum byproducts used as a fuel whether in a liquid, solid, or gaseous state.

(46) "General account" means a CAIR NO_X allowance tracking system account, established section 9 of this rule, that is not a compliance account.

(47) "Generator" means a device that produces electricity.

(48) "Gross electrical output" means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process. This process may include, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls.

(49) "Heat input" means, with regard to a specified period of time, the product, in million British thermal units per unit of time (MMBtu/time) of the gross calorific value of the fuel, in British thermal units per pound (Btu/lb), divided by one million (1,000,000) British thermal units per million British thermal units (Btu/mmBtu) and multiplied by the fuel feed rate into a combustion device, in pounds of fuel per unit of time (lb of fuel/time), as measured, recorded, and reported to the U.S. EPA by the CAIR designated representative and determined by the U.S. EPA in accordance with section 11 of this rule and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(50) "Heat input rate" means the amount of heat input, in million British thermal units (mmBtu), divided by unit operating time, in hours, or, with regard to a specific fuel, the amount of heat input attributed to the fuel, in million British thermal units (mmBtu), divided by the unit operating time, in hours, during which the unit combusts the fuel.

(51) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or

is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(A) for the life of the unit;

(B) for a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(C) for a period no less than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(52) "Maximum design heat input" means, starting from the initial installation of a unit, the maximum amount of fuel per hour, in British thermal units per hour (Btu/hr), that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour, in British thermal units per hour (Btu/hr), that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

(53) "Mercury (Hg) budget trading program" means a multistate Hg air pollution control and emission reduction program approved and administered by the U.S. EPA in accordance with 40 CFR part 60, Subpart HHHH* and 40 CFR 60.24(h)(6)*, or established by the U.S. EPA, as a means of reducing national mercury emissions.

(54) "Monitoring system" means any monitoring system that meets the requirements of section 11 of this rule, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR 75*.

(55) "Most stringent state or federal NO_X emissions limitation" means, with regard to a unit, the lowest NO_X emissions limitation, in terms of pounds per million British thermal units (lb/mmBtu), that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(56) "Nameplate capacity" means, starting from the initial installation of a generator, the maximum electrical generating output, in megawatt electrical (MWe), that the generator is capable of producing on a steady state basis and during continuous operation, when not restricted by seasonal or other deratings, as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output, in megawatt electrical (MWe), that the generator is capable of producing on a steady state basis and during continuous operation, when not restricted by seasonal or other deratings, such increased maximum amount as specified by the person conducting the physical change.

(57) "Operator" means any person who operates, controls, or supervises a CAIR NO_X unit or a CAIR NO_X source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(58) "Owner" means any of the following persons:

(A) with regard to a CAIR NO_X source or a CAIR NO_X unit at a source, respectively:

(i) any holder of any portion of the legal or equitable title in a CAIR NO_X unit at the source or the CAIR NO_X unit;

(ii) any holder of a leasehold interest in a CAIR NO_X unit at the source or the CAIR NO_X unit; or

(iii) any purchaser of power from a CAIR NO_X unit at the source or the CAIR NO_X unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, on the revenues or income from such CAIR NO_X unit; or

(B) with regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_X allowances.

(59) "Potential electrical output capacity" means thirty-three percent (33%) of a unit's maximum design heat input, divided by three thousand four hundred thirteen (3,413) Btu/kilowatt hour, divided by one thousand (1,000) kilowatt hour/megawatt hour, and multiplied by eight thousand seven hundred sixty (8,760) hours/year.

(60) "Rated energy efficiency" means the percentage of gross energy input that is recovered as useable net energy output in the form of electricity or thermal energy, or both, that is used for heating, cooling, industrial processes, or other beneficial uses as follows:

(A) For electric generators, rated energy efficiency is calculated as one (1) net kilowatt hour (three thousand four hundred twelve (3,412) British thermal units) of electricity divided by the unit's design heat rate using the higher heating value of the fuel.

(B) For combined heat and power projects, rated energy efficiency is calculated using the following formula:

$$Eff\% = (NEO + UTO)/GEI$$

Where: Eff% = Rated energy efficiency.

NEO = Net electrical output of the system converted to British thermal units per unit of time.

UTO = Utilized thermal output or the energy value in British thermal units of thermal energy from the system that is

used for heating, cooling, industrial processes, or other beneficial uses, per unit of time.

GEI = Gross energy input, based upon the higher heating value of fuel, per unit of time.

(61) "Receive" or "receipt of" means, when referring to the department or U.S. EPA, to come into possession of a document, information, or correspondence, whether sent in hard copy or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the department or U.S. EPA in the regular course of business.

(62) "Recordation", "record", or "recorded" means, with regard to CAIR NO_X allowances, the movement of CAIR NO_X allowances by the U.S. EPA into or between CAIR NO_X allowance tracking system accounts, for purposes of allocation, transfer, or deduction.

(63) "Reference method "means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22*.

(64) "Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one (1) of the following coal-fired technologies at the same source as the coal-fired boiler:

(A) atmospheric or pressurized fluidized bed combustion;

(B) integrated gasification combined cycle;

(C) magnetohydrodynamics;

(D) direct and indirect coal-fired turbines;

(E) integrated gasification fuel cells; or

(F) as determined by the U.S. EPA in consultation with the Secretary of Energy, a derivative of one (1) or more of the technologies under clauses (A) through (E) and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

(65) "Sequential use of energy" means:

(A) for a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(B) for a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

(66) "Serial number" means, for a CAIR NO_X allowance, the unique identification number assigned to each CAIR NO_X allowance by the U.S. EPA.

(67) "Solid waste incineration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a solid waste incineration units as defined in the Clean Air Act, Section 129(g)(1).

(68) "Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of Section 502(c) of the Clean Air Act, a source, including a source with multiple units, shall be considered a single facility.

(69) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable rule:

(A) in person;

(B) by United States Postal Service; or

(C) by other means of dispatch or transmission and delivery.

Compliance with any submission or service deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(70) "Title V operating permit" or "Part 70 operating permit" means a permit issued under 326 IAC 2-7.

(71) "Title V operating permit regulations" or "Part 70 operating permit regulations" means the rules under 326 IAC 2-7.

(72) "Ton" means two thousand (2,000) pounds. For the purpose of determining compliance with the CAIR NO_X emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions, or the mass equivalent of the recorded hourly emission rates, in accordance with section 11 of this rule, but with any remaining fraction of a ton equal to or greater than fifty-hundredths (0.50) tons deemed to equal one (1) ton and any remaining fraction of a ton less than fifty-hundredths (0.50) tons deemed to equal zero (0) tons.

(73) "Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

(74) "Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

(75) "Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

(76) "Unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(77) "Unit operating day" means a calendar day in which a unit combusts any fuel.

(78) "Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

(79) "Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process, which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls.

(80) "Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

(A) made available to an industrial or commercial process, not a power production process, excluding any heat contained in condensate return or makeup water;

(B) used in a heating application (for example, space heating or domestic hot water heating); or

(C) used in a space cooling application (that is, thermal energy used by an absorption chiller).

(81) "Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-1-2)*

326 IAC 24-1-3 Retired unit exemption

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

Sec. 3. (a) This section applies to any CAIR NO_X unit, other than a NO_X opt-in source, that is permanently retired.

(1) Any CAIR NO_X unit that is permanently retired and is not a CAIR NO_X opt-in unit under section 12 of this rule shall be exempt from the CAIR NO_X annual trading program, except for the provisions of this section, and sections 1, 2, 4(c)(4) through 4(c)(7), 5, 6, and 8 through 10 of this rule.

(2) The exemption under this section shall become effective the day on which the CAIR NO_X unit is permanently retired. Within thirty (30) days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the department and shall submit a copy of the statement to the U.S. EPA. The statement shall state, in a format prescribed by the department, that the unit was permanently retired on a specific date and shall comply with the requirements of subsection (b).

(3) After receipt of the statement under subdivision (2), the department shall amend any permit under section 7 of this rule covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision (1) and subsection (b).

(b) A unit exempt under this section shall comply with the following provisions:

(1) The unit shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The department shall allocate CAIR NO_X allowances under section 8 of this rule to the unit.

(3) For a period of five (5) years from the date the records are created, the owners and operators of the unit shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The five (5) year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the department or U.S. EPA. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of the unit shall comply with the requirements of the CAIR NO_X annual trading program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) If the unit is located at a source that is required, or but for this exemption would be required, to have an operating permit under 326 IAC 2-7 or a FESOP permit under 326 IAC 2-8, the unit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under section 7(c) of this rule for the unit not less than eighteen (18) months, or such lesser time provided by the department, before the later of January 1, 2009, or the date on which the unit resumes operation.

(6) A unit exempt under this section shall lose its exemption on the earlier of the following dates:

(A) The date on which the CAIR designated representative submits a CAIR permit application for the unit under subdivision (5).

(B) The date on which the CAIR designated representative is required under subdivision (5) to submit a CAIR permit application for the unit.

(C) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and record keeping requirements under section 11 of this rule, a unit that loses its exemption under this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

(Air Pollution Control Board; 326 IAC 24-1-3)

326 IAC 24-1-4 Standard requirements

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

Sec. 4. (a) The owners and operators, and CAIR designated representative of each CAIR NO_X source shall comply with the following permit requirements:

(1) The CAIR designated representative of each CAIR NO_X source required to have a federally enforceable permit and each CAIR NO_X unit required to have a federally enforceable permit at the source shall submit the following to the department:

(A) A complete CAIR permit application under section 7(c) of this rule in accordance with the deadlines specified in section 7(b) of this rule.

(B) Any supplemental information that the department determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_X source required to have a federally enforceable permit and each CAIR NO_X unit required to have a federally enforceable permit at the source shall have a CAIR permit issued by the department under section 7 of this rule for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in section 12 of this rule, the owners and operators of a CAIR NO_X source that is not otherwise required to have a federally enforceable permit and each CAIR NO_X unit that is not otherwise required to have a federally enforceable permit are not required to submit a CAIR permit application, and to have a CAIR permit, under section 7 of this rule for such CAIR NO_X source and such CAIR NO_X unit.

(b) The owners and operators, and the CAIR designated representative, of each CAIR NO_X source and CAIR NO_X unit at the source shall comply with the following monitoring, reporting, and record keeping requirements:

(1) The owners and operators, and the CAIR designated representative, of each CAIR NO_X source and each CAIR NO_X unit at the source shall comply with the monitoring, reporting, and record keeping requirements of section 11 of this rule.

(2) The emissions measurements recorded and reported in accordance with section 11 of this rule shall be used to determine compliance by each CAIR NO_X source with the CAIR NO_X emissions limitation under subsection (c).

(c) The owners and operators, and the CAIR designated representative, of each CAIR NO_X source and CAIR NO_X unit at the source shall comply with the following nitrogen oxides emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X source and each CAIR NO_X unit at the source shall hold, in the source's compliance account, CAIR NO_X allowances available for compliance deductions for the control period under section 9(i) of this rule in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X units at the source, as determined in accordance with section 11 of this rule.

(2) A CAIR NO_X unit shall be subject to the requirements under subdivision (1) for the control period starting on the later of January 1, 2009, or the deadline for meeting the unit's monitor certification requirements under section 11(c)(1), 11(c)(2), or 11(c)(5) of this rule and for each control period thereafter.

(3) A CAIR NO_X allowance shall not be deducted, for compliance with the requirements under subdivision (1), for a control period in a calendar year before the year for which the CAIR NO_X allowance was allocated.

(4) CAIR NO_X allowances shall be held in, deducted from, or transferred into or among CAIR NO_X allowance tracking system accounts in accordance with section 8 of this rule.

(5) A CAIR NO_X allowance is a limited authorization to emit one (1) ton of nitrogen oxides in accordance with the CAIR NO_X annual trading program. No provision of the CAIR NO_X annual trading program, the CAIR permit application, the CAIR permit, or an exemption under section 3 of this rule and no provision of law shall be construed to limit the authority of the department or the U.S. EPA to terminate or limit such authorization.

(6) A CAIR NO_X allowance does not constitute a property right.

(7) Upon recordation by the U.S. EPA under section 9, 10, or 12 of this rule, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from a CAIR NO_X source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) The owners and operators of a CAIR NO_X source and each CAIR NO_X unit at the source that emits nitrogen oxides during any control period in excess of the CAIR NO_X emissions limitation shall do the following:

(1) Surrender the CAIR NO_X allowances required for deduction under section 9(j)(4) of this rule.

(2) Pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable state law.

Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this section, the Clean Air Act, and applicable state law.

(e) Owners and operators of each CAIR NO_X source and each CAIR NO_X unit at the source shall comply with the following record keeping and reporting requirements:

(1) Unless otherwise provided, the owners and operators of the CAIR NO_X source and each CAIR NO_X unit at the source shall keep on site at the source each of the following documents for a period of five (5) years from the date the document is created. This period may be extended for cause, at any time before the end of five (5) years, in writing by the department or U.S. EPA.

(A) The certificate of representation under section 6(h) of this rule for the CAIR designated representative for the source and each CAIR NO_X unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such five (5) year period until such documents are superseded because of the submission of a new certificate of representation under section 6(h) of this rule changing the CAIR designated representative.

(B) All emissions monitoring information, in accordance with section 11 of this rule, provided that to the extent that section 11 of this rule provides for a three (3) year

period for record keeping, the three (3) year period shall apply.

(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X annual trading program.

(D) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X annual trading program or to demonstrate compliance with the requirements of the CAIR NO_X annual trading program.

(2) The CAIR designated representative of a CAIR NO_X source and each CAIR NO_X unit at the source shall submit the reports required under the CAIR NO_X annual trading program, including those section 11 of this rule.

(f) The owners and operators of each CAIR NO_X source and each CAIR NO_X unit shall be liable as follows:

(1) Each CAIR NO_X source and each CAIR NO_X unit shall meet the requirements of the CAIR NO_X annual trading program.

(2) Any provision of the CAIR NO_X annual trading program that applies to a CAIR NO_X source or the CAIR designated representative of a CAIR NO_X source shall also apply to the owners and operators of such source and of the CAIR NO_X units at the source.

(3) Any provision of the CAIR NO_X annual trading program that applies to a CAIR NO_X unit or the CAIR designated representative of a CAIR NO_X unit shall also apply to the owners and operators of such unit.

(g) No provision of the CAIR NO_X annual trading program, a CAIR permit application, a CAIR permit, or an exemption under section 3 of this rule shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X source or CAIR NO_X unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, or the Clean Air Act. *(Air Pollution Control Board; 326 IAC 24-1-4)*

326 IAC 24-1-5 Computation of time

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) Unless otherwise stated, any time period scheduled, under the CAIR NO_X annual trading program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_X annual trading program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_X annual trading program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day. *(Air Pollution Control Board; 326 IAC 24-1-5)*

326 IAC 24-1-6 CAIR designated representative for CAIR NO_x sources

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) Except as provided under subsection (f), each CAIR NO_X source, including all CAIR NO_X units at the source, shall have one (1) and only one (1) CAIR designated representative, with regard to all matters under the CAIR NO_X annual trading program concerning the source or any CAIR NO_X unit at the source.

(b) The CAIR designated representative of the CAIR NO_X source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X units at the source and shall act in accordance with the certification statement in subsection (h)(4).

(c) Upon receipt by the U.S. EPA of a complete certificate of representation under subsection (h), the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X source represented and each CAIR NO_X unit at the source in all matters pertaining to the CAIR NO_X annual trading program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the department, the U.S. EPA, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_X allowance tracking system account will be established for a CAIR NO_X unit at a source, until the U.S. EPA has received a complete certificate of representation under subsection (h) for a CAIR designated representative of the source and the CAIR NO_X units at the source.

(e) The following shall apply to a submissions made under the CAIR NO_X annual trading program:

(1) Each submission under the CAIR NO_X annual trading program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_X source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the

information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.".

(2) The department and U.S. EPA will accept or act on a submission made on behalf of owner or operators of a CAIR NO_X source or a CAIR NO_X unit only if the submission has been made, signed, and certified in accordance with subdivision (1).

(f) The following shall apply where the owners or operators of a CAIR NO_X source choose to designate an alternate CAIR designated representative:

(1) A certificate of representation under subsection (h) may designate one (1) and only one (1) alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(2) Upon receipt by the U.S. EPA of a complete certificate of representation under subsection (h), any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(3) Except in this subsection and subsections (a), (d), (g), and (h), and sections 2, 9(a) through 9(c), and 12(d) of this rule, whenever the term "CAIR designated representative" is used in this rule, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

(g) The following shall apply when changing the CAIR designated representative, the alternate CAIR designated representative, or when there are changes in the owners or operators:

(1) The CAIR designated representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete certificate of representation under subsection (h). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the U.S. EPA receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_X source and the CAIR NO_X units at the source.

(2) The alternate CAIR designated representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete certificate of representation under subsection (h). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the U.S. EPA receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_X source and the CAIR NO_X units at the source.

(3) Changes in the owner and operators shall be made as follows:

(A) In the event a new owner or operator of a CAIR NO_X source or a CAIR NO_X unit is not included in the list of owners and operators in the certificate of representation under subsection (h), such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the department, the U.S. EPA, or a court, as if the new owner or operator were included in such list.

(B) Within thirty (30) days following any change in the owners and operators of a CAIR NO_X source or a CAIR NO_X unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under subsection (h) amending the list of owners and operators to include the change.

(h) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the U.S. EPA:

(1) Identification of the CAIR NO_X source, and each CAIR NO_X unit at the source, for which the certificate of representation is submitted.

(2) The name, address, e-mail address, if any, telephone number, and facsimile transmission number, if any, of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_X source and of each CAIR NO_X unit at the source.

(4) The following certification statement by the CAIR designated representative and any alternate CAIR designated representative: "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_X unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X annual trading program on behalf of the owners and operators of the source and of each CAIR NO_X unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions. I certify that the owners and operators of the source and of each CAIR NO_X unit at the source shall be bound by any

order issued to me by the U.S. EPA, the department, or a court regarding the source or unit. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_X unit, or where a utility or industrial customer purchases power from a CAIR NO_X unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X unit at the source; and CAIR NO_X allowances and proceeds of transactions involving CAIR NO_X allowances shall be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_X allowances by contract, CAIR NO_X allowances and proceeds of transactions involving CAIR NO_X allowances shall be deemed to be held or distributed in accordance with the contract.".

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(i) The following shall apply to objections concerning CAIR designated representatives:

(1) Once a complete certificate of representation under subsection (h) has been submitted and received, the department and the U.S. EPA will rely on the certificate of representation unless and until a superseding complete certificate of representation under subsection (h) is received by the U.S. EPA.

(2) Except as provided in subsection (g)(1) or (g)(2), no objection or other communication submitted to the department or the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the department or the U.S. EPA under the CAIR NO_X annual trading program.

(3) Neither the department nor the U.S. EPA will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

(Air Pollution Control Board; 326 IAC 24-1-6)

326 IAC 24-1-7 Permit requirements

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

Sec. 7. (a) For each CAIR NO_X source required to have a federally enforceable permit, the permit shall include a CAIR permit administered by the department as follows:

(1) For CAIR NO_X sources required to have a Part 70 operating permit under 326 IAC 2-7, the CAIR portion of the Part 70 operating permit shall be administered in accordance with 326 IAC 2-7, except as provided otherwise by this section or section 12 of this rule.

(2) For CAIR NO_X sources required to have a FESOP permit under 326 IAC 2-8, the CAIR portion of the FESOP permit shall be administered in accordance with 326 IAC 2-8, except as provided otherwise by this section or section 12 of this rule.

(3) Each CAIR permit, including a draft or proposed CAIR permit, if applicable, shall contain, with regard to the CAIR NO_X source and the CAIR NO_X units at the source covered by the CAIR permit, all applicable CAIR NO_X annual trading program, CAIR NO_X ozone season trading program, and CAIR SO_2 trading program requirements and shall be a complete and separable portion of the Part 70 operating permit or FESOP permit.

(b) Submission of CAIR permit applications is as follows:

(1) The CAIR designated representative of any CAIR NO_X source required to have a Part 70 operating permit or FESOP permit shall submit to the department a complete CAIR permit application under subsection (c) for the source covering each CAIR NO_X unit at the source at least eighteen (18) months before the later of January 1, 2009, or the date on which the CAIR NO_X unit commences operation.

(2) For a CAIR NO_X source required to have a Part 70 operating permit or FESOP permit, the CAIR designated representative shall submit a complete CAIR permit application under subsection (c) for the source covering each CAIR NO_X unit at the source to renew the CAIR permit in accordance with 326 IAC 2-7-4(a)(1)(D) or 326 IAC 2-8-3(h), as applicable.

(c) In addition to the requirements of 326 IAC 2-7-4(c) or 326 IAC 2-8-3(c), a complete CAIR permit application shall include the following elements concerning the CAIR NO_X source for which the application is submitted:

(1) Identification of the CAIR NO_X source.

(2) Identification of each CAIR NO_X unit at the CAIR NO_X source.

(3) The standard requirements under section 4 of this rule.

(d) In addition to the requirements under 326 IAC 2-7 or 326 IAC 2-8, each CAIR permit shall contain, in a format prescribed by the department, all elements required for a

complete CAIR permit application under subsection (c).

(e) Each CAIR permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA section 9, 10, or 12 of this rule, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from the compliance account of the CAIR NO_X source covered by the permit.

(f) The initial CAIR permit covering a CAIR unit for which a complete CAIR permit application is timely submitted under subsection (b) shall become effective upon issuance.

(g) The term of the CAIR permit shall be set by the department, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_X source's Part 70 operating permit or FESOP permit.

(h) Except as provided in subsection (e), the department shall revise the CAIR permit, as necessary, in accordance with the following:

(1) The permit modification and revision provisions under 326 IAC 2-7, for a CAIR source with a Part 70 operating permit.

(2) The permit modification and revision provisions under 326 IAC 2-8, for a CAIR source with a FESOP permit.

(Air Pollution Control Board; 326 IAC 24-1-7)

326 IAC 24-1-8 CAIR NO_x allowance allocations

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

Sec. 8. (a) The trading program budget allocated by the department under subsections (d) through (h) for each control period shall equal the total number of tons of NO_X emissions apportioned to the CAIR NO_X units under section 1 of this rule, as determined by the procedures in this section. The total number of tons of NO_X emissions that are available for each control period for annual allocations of CAIR NO_X allowances under this rule are one hundred eight thousand nine hundred thirty-five (108,935) tons for control periods in 2009 through 2014 and ninety thousand seven hundred seventy-nine (90,779) for control periods in 2015 and thereafter, apportioned as follows:

(1) For existing units:

(A) one hundred three thousand four hundred eighty-eight (103,488) tons for CAIR NO_X units for a control period during 2009 through 2014; and

(B) eighty-eight thousand fifty-six (88,056) tons for CAIR NO_X units for a control period during 2015 and thereafter.

(2) For new unit allocation set-asides:

(A) four thousand three hundred fifty-seven (4,357) tons for CAIR NO_X units for a control period during 2009 through 2014; and

(B) one thousand eight hundred sixteen (1,816) tons for CAIR NO_X units for a control period during 2015 and thereafter.

(3) For the energy efficiency and renewable energy allocation set-asides:

(A) one thousand eighty-nine (1,089) tons for CAIR NO_X units for a control period during 2009 through 2014; and

(B) nine hundred eight (908) tons for CAIR NO_X units for a control period during 2105 and thereafter.

(b) The department shall allocate CAIR NO_X allowances to CAIR units according to the following schedule:

(1) Within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the CAIR NO_X allowance allocations, in a format prescribed by the U.S. EPA and in accordance with subsections (c) and (d), for the control periods in 2009, 2010, and 2011.

(2) By October 31, 2009, and October 31 every three (3) years thereafter, the department shall submit to the U.S. EPA the CAIR NO_X allowance allocations, in a format prescribed by the U.S. EPA and in accordance with subsections (c) and (d), for the control periods three (3) years, four (4), and five (5) years after the year of the allowances allocation.

(3) By October 31, 2009, and October 31 of each year thereafter, the department shall submit to the U.S. EPA the CAIR NO_X allowance allocations, in a format prescribed by the U.S. EPA and in accordance with subsections (c), (e), and (f), for the control period in the year of the applicable deadline for submission under this rule.

(4) If the department fails to submit to the U.S. EPA the CAIR NO_X allowance allocations in accordance with subdivision (2), the U.S. EPA will assume that the allocations of CAIR NO_X allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the U.S. EPA will assume that the allocations equal eighty-three percent (83%) of the allocations for the control period that immediately precedes the applicable control period.

(5) If the department fails to submit to the U.S. EPA the CAIR NO_X allowance allocations in accordance with subdivision (3), the U.S. EPA will assume that the allocations of CAIR NO_X allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the U.S. EPA will assume that the allocations equal eighty-three percent (83%) of the allocations for the control period that immediately precedes the applicable control period and except that any CAIR NO_X unit that would otherwise be allocated CAIR NO_X allowances under subsections (c) and (d), as well as under subsections (c), (e), and (f), for the applicable control period shall be assumed to be allocated no CAIR NO_X allowances under subsections (c), (e), and (f) for the applicable control period.

(6) The department shall make available for review to the public the CAIR NO_X allowance allocations under subdivision (2) on July 31 of each year allocations are made and shall provide a thirty (30) day opportunity for submission of objections to the CAIR NO_X allowance allocations. Objections shall be limited to addressing whether the CAIR NO_X allowance allocations are in accordance with this section. Based on any such objections, the department shall consider any objections and input from affected sources and, if appropriate, adjust each determination to the extent necessary to ensure that it is in accordance with this section.

(c) The baseline heat input, in million British thermal units (mmBtu) used with respect to CAIR NO_X allowance allocations under subsection (d) for each CAIR NO_X unit shall be as follows:

(1) For units commencing operation before January 1, 2001:

(A) For a CAIR NO_X allowance allocation under subsection (b)(1), the average of the three (3) highest amounts of the unit's adjusted control period heat input for 1998 through 2004, with the adjusted control period heat input for each year calculated as follows:

(i) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by one hundred percent (100%).

(ii) If the unit is not coal-fired during the year, the unit's control period heat input for such year is multiplied by sixty percent (60%).

(B) For a CAIR NO_X allowance allocation under subsection (b)(2), the average of the three (3) highest amounts of the unit's adjusted control period heat input for the seven (7) years before when the CAIR NO_X allocation is being calculated, with the adjusted control period heat input for each year calculated as follows:

(i) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by one hundred percent (100%).

(ii) If the unit is not coal-fired during the year, the unit's control period heat input for such year is multiplied by sixty percent (60%).

(2) For units commencing operation on or after January 1, 2001, and operating each calendar year during a period of three (3) or more consecutive calendar years, not to exceed seven (7), the average of the three (3) highest amounts of the unit's total converted control period heat input.

(3) A unit's control period heat input, and a unit's status as coal-fired or not coal-fired, for a calendar year under subdivision (1), and a unit's total tons of NO_X emissions during a calendar year under subsection (e), shall be determined in accordance with 40 CFR 75*, to the extent the unit was otherwise subject to the requirements of 40 CFR 75* for the year, or shall be based on the best available data reported to the department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75* for the year.

(4) A unit's converted control period heat input for a calendar year under subdivision (2) equals one (1) of the following:

(A) Except as provided in clause (B), the control period gross electrical output of the generator or generators served by the unit multiplied by eight thousand nine hundred (8,900) British thermal units per kilowatt hour (Btu/kWh) divided by one million (1,000,000) British thermal units per million British thermal units (Btu/mmBtu), provided that if a generator is served by two (2) or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year.

(B) For a unit that has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the unit multiplied by eight thousand nine hundred (8,900) British thermal units per kilowatt hour (Btu/kWh) plus the useful energy, in British thermal units (Btu), produced during the control period divided by eight-tenths (0.8), and with the sum divided by one million (1,000,000) British thermal units per million British thermal units (Btu/mmBtu).

(d) For each control period in 2009 and thereafter, the department shall allocate to all CAIR NO_X units that have a baseline heat input, as determined under subsection (c), a total amount of CAIR NO_X allowances as listed in subsection (a)(1), except as provided in subsection (f). The department shall allocate CAIR NO_X allowances to each CAIR NO_X in an amount determined by multiplying the total amount under subsection (a)(1) by the ratio of the baseline heat input of such CAIR NO_X unit to the total amount of baseline heat input of all such CAIR NO_X units and rounding to the nearest whole allowance as appropriate.

(e) For each control period in 2009 and thereafter, the department shall allocate CAIR NO_X allowances to CAIR NO_X units that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input, as determined under subsection (c), in accordance with the following procedures:

(1) The department shall establish a new unit set-aside for each control period equal to the following:

(A) Four thousand three hundred fifty-seven (4,357) tons (four percent (4%) of the annual budget) for a control period during 2009 through 2014.

(B) One thousand eight hundred sixteen (1,816) tons (two percent (2%) of the annual budget) for CAIR NO_X units for a control period during 2015 and thereafter.

(2) The CAIR designated representative of such a CAIR NO_X unit may submit to the department a request, in a

format specified by the department, to be allocated CAIR NO_X allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X allowances under subsection (d). The CAIR NO_X allowance allocation request must be submitted on or before May 1 of the first control period for which the CAIR NO_X allowances are requested and after the date on which the CAIR NO_X unit commences commercial operation.

(3) In a CAIR NO_X allowance allocation request under subdivision (2), the CAIR designated representative may request for a control period CAIR NO_X allowances in an amount not exceeding the CAIR NO_X unit's total tons of NO_X emissions during the calendar year immediately before such control period.

(4) The department shall review each CAIR NO_X allowance allocation request under subdivision (2) and shall allocate CAIR NO_X allowances for each control period pursuant to such request as follows:

(A) The department shall accept an allowance allocation request only if the request meets, or is adjusted by the department as necessary to meet, the requirements of subdivisions (2) and (3).

(B) On or after May 1 of the control period, the department shall determine the sum of the CAIR NO_X allowances requested, as adjusted under clause (A), in all allowance allocation requests accepted under clause (A) for the control period.

(C) If the amount of CAIR NO_X allowances in the new unit set-aside for the control period is greater than or equal to the sum under clause (B), then the department shall allocate the amount of CAIR NO_X allowances requested, as adjusted under clause (A), to each CAIR NO_X unit covered by an allowance allocation request accepted under clause (A).

(D) If the amount of CAIR NO_X allowances in the new unit set-aside for the control period is less than the sum under clause (B), then the department shall allocate to each CAIR NO_X unit covered by an allowance allocation request accepted under clause (A) the amount of the CAIR NO_X allowances requested, as adjusted under clause (A), multiplied by the amount of CAIR NO_X allowances in the new unit set-aside for the control period, divided by the sum determined under clause (B), and rounded to the nearest whole allowance as appropriate.

(E) The department shall notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X allowances, if any, allocated for the control period to the CAIR NO_X unit covered by the request.

(f) If, after completion of the procedures under subsection (e)(4) for a control period, any unallocated CAIR NO_X allowances remain in the new unit set-aside for the control period, the department shall allocate to each CAIR NO_X unit that was allocated CAIR NO_X allowances under subsection (d) an amount of CAIR NO_X allowances equal to the total amount of such remaining unallocated CAIR NO_X allowances, multiplied by the unit's allocation under subsection (d), divided by one hundred three thousand four hundred eighty-nine (103,489) for a control period during 2009 through 2014, and eighty-eight thousand fifty-five (88,055) for a control period during 2015 and thereafter.

(g) In addition to the CAIR NO_x allowances allocated under subsections (c), (d), and (f), the department shall allocate for control period in 2009 up to twenty thousand one hundred fifty-five (20,155) compliance supplement pool NO_x allowances to CAIR NO_x units, in accordance with this section. First, the department shall reserve allowances for eligible units and assign the reserved allowances in accordance with subdivisions (2) and (3). Then, the department will allocate earned CAIR NO_x allowances and surplus CAIR NO_x allowances in accordance with subdivision (5).

(1) The following terms and meanings apply to this section:

(A) "Eligible unit" or "eligible units" means a CAIR NO_x unit that:

(i) will be required to comply with CAIR Annual NO_x emission limitations beginning January 1, 2009;

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(ii) has or will have control equipment installed before December 31, 2008, that can achieve the unit's applicable acid rain NO_x emissions rate without using averaging; or

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(iii) has or will have postcombustion control equipment such as, but not limited to, selective noncatalytic reduction or selective catalytic reduction, installed before December 31, 2008, that is capable of reducing NO_x emissions below the unit's applicable acid rain NO_x emission rate limitation without using averaging;

(iv) has an established heat input baseline; and

(v) for which the department has approved its application in accordance with subdivision (2).

(B) "Emission reduction" or "emission reductions" will be calculated, in tons per year, in accordance with the following formula:

Emission reductions = [eligible unit's actual heat input for 2007 and 2008, combined (excluding May 1 through September 30 of each year) × eligible unit's most stringent applicable state or federal NO_x emission rate] − [eligible unit's actual heat input for 2007 and 2008, combined (excluding May 1 through September 30 of each year) × actual NO_x emission rate].

(C) "Reserved allowance" means an allowance from the compliance supplement pool that the department reserves for an eligible unit. Reserved allowances have no independent value and cannot be traded until after

they are earned and allocated as CAIR NO_x allowances to an eligible unit.

(2) To receive reserved allowances, the designated representative for a CAIR NO_x unit must submit an application to the department, in a format specified by the department, within thirty (30) days of the effective date of this rule, demonstrating that it satisfies subdivision (1)(A)(i) through (1)(A)(iii). The department shall approve or deny the application within one hundred twenty (120) days after receipt of the application and designate the amount of allowances it has reserved for that unit at that time.

(3) The department shall assign reserved allowances to each eligible unit, based on the following formula:

Number of reserved allowances, in tons per year = (eligible unit's baseline heat input ÷ sum of baseline heat input from all eligible units) × (95% × 20,155).

(4) In order to receive CAIR NO_x allowances from the compliance supplement pool the following conditions must be met:

(A) The owners and operators of an eligible unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with section 11 of this rule in each control period for which early reduction credit is requested.

(B) The CAIR designated representative of an eligible unit shall submit to the department by July 1, 2009, a request, in a format specified by the department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool identifying the number of emissions reductions it has achieved and demonstrating that it has satisfied subdivision (1) by July 1, 2009.

(5) The department shall review each request under subdivision (4) submitted by July 1, 2009 and shall allocate CAIR NO_x allowances from the compliance supplement pool for the control period in 2009 to CAIR NO_x units, in accordance with the following procedures:

(A) Upon receipt of each such request, the department shall make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of subdivisions (3) and (4). If an eligible unit achieved emission reductions less than or equivalent to the reserved allowances assigned to it under subdivision (3), the department shall allocate CAIR NO_x allowances from the compliance supplement pool to the eligible unit equal to the actual emission reductions achieved by the eligible unit. Any reserved allowances not earned by an eligible unit shall remain in the compliance supplement pool to be distributed in accordance with clause (C).

(B) To the extent an eligible unit achieved emission reductions in excess of the reserved allowances assigned to it under subdivision (3), the department shall allocate CAIR NO_x allowances to the eligible unit equal to the number of its reserved allowances, plus additional CAIR NO_x allowances, if any, from the compliance supplement pool in accordance with clause (C).

(C) Any CAIR NO_x allowances that remain in the compliance supplement pool following allocation required by clauses (A) and (B) shall be allocated to eligible units that achieved emission reductions in excess of their reserved allowances. The department shall make allocations of the remaining CAIR NO_x allowances in accordance with the following formula:

An eligible unit's additional CAIR NO_x allowances from the compliance supplement pool = (the eligible unit's tons of NO_x emission reductions in excess of its reserved allowance / the total tons of excess NO_x emissions reductions achieved by all eligible units) × the total of remaining CAIR NO_x allowances in the compliance supplement pool following allocation under clauses (A) and (B).

(6) For any CAIR NO_x unit whose compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool in accordance with the following:

(A) The CAIR designated representative of such CAIR NO_x unit shall submit to the department by July 1, 2009, a request, in a format specified by the department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

(B) In the request under clause (A), the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(ii) obtain under subdivisions (5) and (7), or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

(7) The department shall review each request under subdivision (6) submitted by July 1, 2009, and shall allocate CAIR NO_x allowances, not to exceed one thousand eight (1,008) allowances, for the control period in 2009 to CAIR NO_x units covered by such request. If no requests for allowances are received under subdivision (6), the allowances shall be available for allocation under subdivision (5)(C).

(8) By November 30, 2009, the department shall determine, and submit to the U.S. EPA the allocations of CAIR NO_x allowances from the compliance supplement pool under subdivisions (5) and (7).

(9) By January 1, 2010, the U.S. EPA will record the allocations under subdivision (8).

(h) For projects that reduce NO_X emissions through the implementation of energy efficiency or renewable energy measures, or both, implemented during a control period beginning January 1, 2009, the department shall allocate NO_X allowances in accordance with the following procedures:

(1) The energy efficiency and renewable energy allocation set-aside shall be allocated NO_X allowances equal to the following:

(A) One thousand eighty-nine (1,089) tons of the new unit set-aside) for a control period during 2009 through 2014.

(B) Nine hundred eight (908) tons for a control period during 2015 and thereafter.

(2) Project sponsors of a general account may submit to the department a request, in writing, or in a format specified by the department, for NO_X allowances as follows:

(A) Sponsors of energy efficiency or renewable energy projects in section 2(40)(A) through 2(40)(G) of this rule may request the reservation of NO_X allowances, for one (1) control period in which the project is implemented. For energy efficiency or renewable energy projects the control period for calculating NO_x allowances is October through April. Project sponsors may reapply each year, not to exceed five (5) control periods for energy efficiency projects and for an unlimited number of years for renewable energy projects in section 2(40)(C) and 2(40)(D) of this rule. Requests for allowances may be made for projects implemented two (2) years before the effective date of this rule. Projects must equal at least one (1) ton of NO_X emissions and multiple projects may be aggregated into one (1) allowance allocation request to equal one (1) or more tons of NO_X emissions.

(B) The NO_X allowance allocation request must be submitted by September 1 of the calendar year that is one (1) year in advance of the first control period for which the NO_X allowance allocation is requested.

(C) The NO_X allowance allocation request for an integrated gasification combined cycle project under section 2(40)(G) of this rule must be submitted by September 1 of the calendar year that is one (1) year in advance of the first control period for which the NO_X allowance allocation is requested and after the date on which the department issues a permit to construct the CAIR NO_X unit. For integrated gasification combined cycle projects, project sponsors may request the reservation of NO_X allowances, based on the number of kilowatt hours of electricity generated based on an eighty-five percent (85%) capacity factor and expected heat rate of the unit. Project sponsors may reapply each year, not to exceed five (5) control periods. Requests for allowances may be made only for integrated gasification combined cycle projects which first start commercial operations in 2009 and beyond.

(3) In a NO_X allowance allocation request made under this subsection, the project sponsor may request for a control period, NO_X allowances not to exceed the following:

(A) Projects in section 2(40)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by end-users or nonutility third parties receive allowances based upon the number of kilowatt hours of electricity saved during a control period and the following formula:

$$Allowances = (kWS \times 0.0015)/2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.
kWS = The number of kilowatt hours of electricity saved during a control period by the project.

(B) Projects in section 2(40)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by electric generating units shall be awarded allowances according to the following formula:

$$Allowances = (kWS \times 0.000375/2,000)$$

Where: Allowances = The number of allowances awarded to a project sponsor.
kWS = The number of kilowatt hours of electricity saved during a control period by the project.

(C) Projects in section 2(40)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are not CAIR NO_X season units shall be awarded allowances according to the following formula:

$$Allowances = (((Et1/Pt1) - (Et2/Pt2)) \times Pt2 \times NPt2 \times (NPt1/NPt2))/2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.
Et1 = Energy consumed per control period before project implementation.
Pt1 = Units of product produced per control period before project implementation.
Et2 = Energy consumed in the most recent control period.
Pt2 = Units of product produced in the most recent control period.

NPt1 = NO_X produced during the consumption of energy, measured in pounds per million British thermal units before project implementation.

NPt2 = NO_X produced during the consumption of energy, measured in pounds per million British thermal units in the most recent control period.

(D) Projects in section 2(40)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are CAIR NO_X season units shall be awarded allowances according to the following formula:

Allowances = (((Et1/Pt1) - (Et2/Pt2)) × Pt2 × NPt2 × (NPt1/NPt2) × 0.25)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per control period before project implementation.

Pt1 = Units of product produced per control period before project implementation.

Et2 = Energy consumed in the most recent control period.

Pt2 = Units of product produced in the most recent control period.

NPt1 = NO_X produced during the consumption of energy, measured in pounds per million British thermal units before project implementation.

NPt2 = NO_X produced during the consumption of energy, measured in pounds per million British thermal units in the most recent control period.

Product produced, as used in these formulas in this clause and clause (C), may include manufactured items; raw, intermediate, or final materials; or other products measured in discrete units and produced as a result of the consumption of energy in a specific process or piece of equipment. Claims for allowances must include documentation of NO_X emissions per British thermal unit both before and after implementation of the project for the energy-consuming process for which energy savings are claimed.

(E) Projects in section 2(40)(B) of this rule that claim allowances based upon highly efficient electricity generation using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end user, that meet the thresholds specified in section 2(40)(B) of this rule, that are not electric generating units or large affected units as defined in section 2 of this rule, and that are sponsored by end-users or nonutility third parties, receive allowances based upon the net amount of electricity generated during a control period and the following formula:

Allowances = (kWG × (0.0015-NO_X))/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of net kilowatt hours of electricity generated during a control period by the project.

NO_X = The amount of NO_X produced during the generation of electricity, measured in pounds per kilowatt hour.

(F) Projects in section 2(40)(B) of this rule that claim allowances based upon highly efficient combined heat and power systems for the predominant use of a single end user, that meet the thresholds specified in section 2(40)(B) of this rule, that are not electric generating units or large affected units as defined in section 2 of this rule, and that are sponsored by end-users or nonutility third parties, receive allowances based upon the net amount of energy generated and used during a control period and the following formula:

Allowances = (NO_X conventional - NO_X CHP)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

NO_X conventional = [(0.15 × 3,412 × kWG / 0.34) + (0.17 × HeatOut / 0.8)] / 1,000,000

NO_X CHP = (BtuIn * NO_XRate)/1,000,000

Where: kWG = The number of net kilowatt hours of electricity generated during a control period by the project.

HeatOut = The number of British thermal units (Btu) of heat or steam effectively used for space, water, or industrial process heat during a control period by the project.

NO_XRate = NO_X emitted during normal system operation by the project, measured in pounds per million Btu of fuel input.

BtuIn = The number of British thermal units (Btu) of fuel used to produce electricity, heat, or steam during a control period by the project.

(G) Projects in section 2(40)(B) and 2(40)(G) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during a control period. Highly efficient electricity generation projects using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end user, that meet a rated energy efficiency threshold of sixty percent (60%) for combined cycle systems and forty percent (40%) for microturbines and fuel cells; or integrated gasification combined cycle, and that are sponsored by NO_X allowance account holders that own or operate units that produce electricity and are subject to the emission limitations of this rule shall receive allowances based upon the net amount of electricity generated during a control period and the following formula:

Allowances = (kWG × (0.0015 - NO_X) × 0.25)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of net kilowatt hours of electricity generated during a control period by the project.

NO_X = The amount of NO_X produced during the generation of electricity, measured in pounds per kilowatt hour.

(H) Projects in subdivision (2) and specified in section 2(40)(C) and 2(40)(D) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during a control period and according to the following formula:

Allowances = (kWG × 0.0015)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of kilowatt hours of electricity generated during a control period by the project.

(I) Projects in subdivision (2) and specified in section 2(40)(E) and 2(40)(F) of this rule receive allowances based upon the difference in emitted NO_X per megawatt hour of operation for units before and after replacement or improvement and according to the following formula:

Allowances = ((Et1 - Et2) × h) × 0.25)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = The emission rate in pounds per megawatt hour of NO_X of the unit before improvement or replacement.

Et2 = The emission rate in pounds per megawatt hour of NO_X of the unit after improvement or replacement.

h = The number of megawatt hours of operation during the control period.

(J) Projects in section 2(40)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are large affected units shall be awarded allowances according to the following formula:

Allowances = (kWS × NO_X × 0.25)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during a control period by the project.

NO_X = The amount of NO_X produced during the generation of electricity, measured in pounds per kilowatt hour.

(K) Projects in section 2(40)(A) of this rule based upon energy efficiency other than electricity shall be awarded allowances according to the following formula:

Allowances = (0.17 × HeatOut / 0.8)/1,000,000/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

HeatOut = The number of British thermal units (Btu) of heat or steam effectively used for space, water, or industrial process heat during a control period by the project.

Allowances shall be awarded only after verification of project implementation and certification of energy, emission, or electricity savings, as appropriate. The department shall consult the office of lieutenant governor concerning verification and certification.

(4) The department shall review, and allocate CAIR NO_X allowances pursuant to, each allowance allocation request by December 31 each year as follows:

(A) Upon receipt of the NO_X allowance allocation request, the department shall review the request and make any necessary adjustments to the request to ensure that the number of allowances specified are consistent with the requirements of subdivision (3).

(B) If the energy efficiency and renewable energy allocation set-aside for the control period for which NO_X allowances are requested has an amount of NO_X allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall allocate the amount of the NO_X allowances requested, as adjusted under clause (A), to the energy efficiency and renewable energy projects. Any unallocated allowances shall be distributed as follows:

(i) Fifty percent (50%) of the unallocated allowances shall be retained by the state to fund a grant program for energy efficiency and renewable energy projects. The grant program projects do not need to meet the one (1) ton of NO_X emissions for singular or aggre-

gated projects under subdivision (2).

(ii) Fifty percent (50%) of the unallocated allowances shall be returned to CAIR NO_X units on a pro rata basis.

(C) If the energy efficiency and renewable energy allocation set-aside for the control period for which NO_X allowances are requested has an amount of NO_X allowances less than the number requested, as adjusted under clause (A), the department shall allocate the allocation set-aside on a pro rata basis, except that allowances requested for projects under section 2(40)(A), 2(40)(C), and 2(40)(D) of this rule shall be allocated first, allocated to projects under section 2(40)(B) and 2(40)(G) of this rule second, allocated to projects under section 2(40)(E) of this rule third, and allocated to projects under section 2(40)(F) of this rule fourth.

By December 31 of each year, the department shall take appropriate action under subdivision (4) and notify the CAIR NO_X designated representative that submitted the request and the U.S. EPA of the number of NO_X allowances allocated for the control period to the CAIR NO_X unit or energy efficiency or renewable energy projects.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-1-8)*

326 IAC 24-1-9 CAIR NO_X allowance tracking system

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) Except as provided in section 12(f)(7) of this rule, upon receipt of a complete certificate of representation under section 6(h) of this rule, the U.S. EPA will establish a compliance account for the CAIR NO_X source for which the certificate of representation was submitted unless the source already has a compliance account.

(b) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_X allowances. An application for a general account may designate one (1) and only one (1) CAIR authorized account representative and one (1) and only one (1) alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative. The establishment of the general account shall be subject to the following:

(1) A complete application for a general account shall be submitted to the U.S. EPA and shall include the following elements in a format prescribed by the U.S. EPA:

(A) The following information concerning the CAIR authorized account representative and any alternate CAIR authorized account representative:

(i) Name.

(ii) Mailing address.

(iii) E-mail address, if any.

(iv) Telephone number.

(v) Facsimile transmission number, if any.

(B) Organization name and type of organization, if applicable.

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_X allowances held in the general account.

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_X allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X annual trading program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the U.S. EPA or a court regarding the general account.".

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(F) Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the application for a general account shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), the following shall apply:

(A) The U.S. EPA will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X allowances held in the general account in all matters pertaining to the

CAIR NO_X annual trading program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the U.S. EPA or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(D) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_X allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_X allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.".

(E) The U.S. EPA will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with clause (D).

(3) The following shall apply to changing the CAIR authorized account representative or alternate CAIR authorized account representative, and changes in persons with ownership interest:

(A) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(B) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(C) In the event a new person having an ownership interest with respect to CAIR NO_X allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the U.S. EPA or a court, as if the new person were included in such list.

(D) Within thirty (30) days following any change in the persons having an ownership interest with respect to CAIR NO_X allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X allowances in the general account to include the change.

(4) Once a complete application for a general account under subdivision (1) has been submitted and received, the U.S. EPA will rely on the application unless and until a superseding complete application for a general account under subdivision (1) is received by the U.S. EPA.

(5) Except as provided in subdivision (3)(A) or (3)(B), no objection or other communication submitted to the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the U.S. EPA under the CAIR NO_X annual trading program.

(6) The U.S. EPA will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account,

including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

(c) The U.S. EPA will assign a unique identifying number to each account established under subsection (a) or (b).

(d) Following the establishment of a CAIR NO_X allowance tracking system account, all submissions to the U.S. EPA pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X allowances in the account, shall be made only by the CAIR authorized account representative for the account.

(e) By December 1, 2006, the U.S. EPA will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at a source, as submitted by the department in accordance with section 8(b)(1) of this rule, for the control periods in 2009, 2010, and 2011.

(f) By December 1, 2009, and every three (3) years thereafter, the U.S. EPA will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source, as submitted by the department or as determined by the U.S. EPA in accordance with section 8(b)(2) and 8(b)(4) of this rule, for the control periods three (3), four (4), and five (5) years after the allowance allocation.

(g) By December 1, 2009, and December 1 of each year thereafter, the U.S. EPA will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source, as submitted by the department or determined by the U.S. EPA in accordance with section 8(b)(3) and 8(b)(5) of this rule, for the control period in the year of the applicable deadline for recordation under this subsection.

(h) When recording the allocation of CAIR NO_X allowances for a CAIR NO_X unit in a compliance account, the U.S. EPA will assign each CAIR NO_X allowance a unique identification number that includes digits identifying the year of the control period for which the CAIR NO_X allowance is allocated.

(i) The CAIR NO_X allowances are available to be deducted for compliance with a source's CAIR NO_X emissions limitation for a control period in a given calendar year only if the CAIR NO_X allowances:

(1) were allocated for the control period in the year or a prior year;

(2) are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X allowance transfer correctly submitted for recordation under section 10(a) by the allowance transfer deadline for the control period; and

(3) are not necessary for deductions for excess emissions for a prior control period under subsection (j)(4) and (j)(5).

(j) The following shall apply to deductions for purposes of compliance with a unit's allocation:

(1) Following the recordation, in accordance with section 10(b) through 10(d) of this rule, of CAIR NO_X allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the U.S. EPA will deduct from the compliance account CAIR NO_X allowances available under subsection (i) in order to determine whether the source meets the CAIR NO_X emissions limitation for the control period, as follows:

(A) until the amount of CAIR NO_X allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with section 11 of this rule, from all CAIR NO_X units at the source for the control period; or

(B) if there are insufficient CAIR NO_X allowances to complete the deductions in clause (A), until no more CAIR NO_X allowances available under subsection (i) remain in the compliance account.

(2) The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_X allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subdivision (1), (4), or (5). Such request shall be submitted to the U.S. EPA by the allowance transfer deadline for the control period and include, in a format prescribed by the U.S. EPA, the identification of the CAIR NO_X source and the appropriate serial numbers.

(3) The U.S. EPA will deduct CAIR NO_X allowances under subdivision (1), (4), or (5) from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X allowances by serial number under subdivision (2), on a first-in, first-out (FIFO) accounting basis in the following order:

(A) Any CAIR NO_X allowances that were allocated to the units at the source, in the order of recordation.

(B) Any CAIR NO_X allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to section 10 of this rule, in the order of recordation.

(4) After making the deductions for compliance under subdivision (1) for a control period in a calendar year in which the CAIR NO_X source has excess emissions, the U.S. EPA will deduct from the source's compliance account an amount of CAIR NO_X allowances, allocated for the control period in the immediately following calendar year, equal to three (3) times the number of tons of the source's excess emissions.

(5) Any allowance deduction required under subdivision (4) shall not affect the liability of the owners and opera-

tors of the CAIR NO_X source or the CAIR NO_X units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable state law.

(6) The U.S. EPA will record in the appropriate compliance account all deductions from such an account under subdivision (1), (4), or (5).

(7) The U.S. EPA may review and conduct independent audits concerning any submission under the CAIR NO_X annual trading program and make appropriate adjustments of the information in the submissions.

(8) The U.S. EPA may deduct CAIR NO_X allowances from or transfer CAIR NO_X allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision (7).

(k) CAIR NO_X allowances may be banked for future use or transfer in a compliance account or a general account. Any CAIR NO_X allowance that is held in a compliance account or a general account shall remain in such account unless and until the CAIR NO_X allowance is deducted or transferred under subsection (i), (j), or (l) or section 10 of this rule.

(l) The U.S. EPA may at its sole discretion and on its own motion, correct any error in any CAIR NO_X allowance tracking system account. Within ten (10) business days of making such correction, the U.S. EPA will notify the CAIR authorized account representative for the account.

(m) The CAIR authorized account representative of a general account may submit to the U.S. EPA a request to close the account, which shall include a correctly submitted allowance transfer under section 10(a) of this rule for any CAIR NO_X allowances in the account to one (1) or more other CAIR NO_X allowance tracking system accounts.

(n) If a general account has no allowance transfers in or out of the account for a twelve (12) month period or longer and does not contain any CAIR NO_X allowances, the U.S. EPA may notify the CAIR authorized account representative for the account that the account shall be closed following twenty (20) business days after the notice is sent. The account shall be closed after the twenty (20) day period unless, before the end of the twenty (20) day period, the U.S. EPA receives a correctly submitted transfer of CAIR NO_X allowances into the account under section 10(a) of this rule or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the U.S. EPA good cause as to why the account should not be closed. *(Air Pollution Control Board; 326 IAC 24-1-9)*

326 IAC 24-1-10 CAIR NO_x allowance transfers

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) A CAIR authorized account representative seeking recordation of a CAIR NO_X allowance transfer shall submit the transfer to the U.S. EPA. To be considered correctly submitted, the CAIR NO_X allowance transfer shall include the following elements, in a format specified by the U.S. EPA:

(1) The account numbers for both the transferor and transferee accounts.

(2) The serial number of each CAIR NO_X allowance that is in the transferor account and that is to be transferred.

(3) The name and signature of the CAIR authorized account representative of the transferor account, and the date signed.

(b) Within five (5) business days, except as provided in subsection (c), of receiving a CAIR NO_X allowance transfer, the U.S. EPA will record a CAIR NO_X allowance transfer by moving each CAIR NO_X allowance from the transferor account to the transferee account as specified by the request, provided the following:

(1) The transfer is correctly submitted under subsection (a).

(2) The transferor account includes each CAIR NO_X allowance identified by serial number in the transfer.

(c) A CAIR NO_X allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the U.S. EPA completes the deductions under section 9(i) and 9(j) of this rule for the control period immediately before such allowance transfer deadline.

(d) Where a CAIR NO_X allowance transfer submitted for recordation fails to meet the requirements of subsection (b), the U.S. EPA will not record such transfer.

(e) The following notification requirements shall apply to CAIR NO_X allowance transfers:

(1) Within five (5) business days of recordation of a CAIR NO_X allowance transfer under subsections (b) and (c), the U.S. EPA will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(2) Within ten (10) business days of receipt of a CAIR NO_X allowance transfer that fails to meet the requirements of subsection (b), the U.S. EPA will notify the CAIR authorized account representatives of both accounts subject to the transfer of the decision not to record the transfer and the reasons for such nonrecordation.

(f) Nothing in this section shall preclude the submission of a CAIR NO_X allowance transfer for recordation following notification of nonrecordation. *(Air Pollution Control Board; 326 IAC 24-1-10)*

326 IAC 24-1-11 NO_x monitoring and reporting requirements

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) The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_X unit, shall comply with the monitoring, record keeping, and reporting requirements as provided in this rule and in 40 CFR 75, Subpart H*. For purposes of complying with such requirements, the definitions in section 2 of this rule and 40 CFR 72.2* shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system (CEMS) in 40 CFR 75* shall be replaced by the terms CAIR NO_X unit, CAIR designated representative, and continuous emission monitoring system (CEMS) respectively, as defined in section 2 of this rule. The owner or operator of a unit that is not a CAIR NO_X unit but that is monitored under 40 CFR 75.72(b)(2)(ii)* shall comply with the same monitoring, record keeping, and reporting requirements as a CAIR NO_X unit.

(b) The owner or operator of each CAIR NO_X unit shall do the following:

(1) Install all monitoring systems required under this section for monitoring NO_X mass emissions and individual unit heat input. This includes all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with 40 CFR 75.71* and 40 CFR 75.72*.

(2) Successfully complete all certification tests required under subsections (f) through (j) and meet all other requirements of this section and 40 CFR 75* applicable to the monitoring systems under subdivision (1).

(3) Record, report, and quality-assure the data from the monitoring systems under subdivision (1).

(c) The owner or operator shall meet the monitoring system certification and other requirements of subsection (b)(1) and (b)(2) on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subsection (b)(1) on and after the following dates:

(1) For the owner or operator of a CAIR NO_X unit that commences commercial operation before July 1, 2007, by January 1, 2008.

(2) For the owner or operator of a CAIR NO_X unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:

(A) January 1, 2008.

(B) The earlier of:

(i) one hundred eighty (180) calendar days after the date on which the unit commences commercial operation; or

(ii) ninety (90) unit operating days after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR NO_X unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under subdivision (1), (2), (4), or (5), compliance by the earlier of:

(A) one hundred eighty (180) calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls; or

(B) ninety (90) unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

(4) Notwithstanding the dates in subdivisions (1) and (2), for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, by the date specified in section 12(f)(2) through (f)(4) of this rule.

(5) Notwithstanding the dates in subdivisions (1), (2), and (4) and solely for purposes of section 4(c)(2) of this rule, for the owner or operator of a CAIR NO_X opt-in unit under section 12 of this rule, by the date on which the CAIR NO_X opt-in unit enters the CAIR NO_X annual trading program as provided in section 12(9) of this rule.

(d) Requirements for reporting data are as follows:

(1) Except as provided in subdivision (2), the owner or operator of a CAIR NO_X unit that does not meet the applicable compliance date set forth in subsection (c) for any monitoring system under subsection (b)(1) shall, for each such monitoring system, determine, record, and report maximum potential or, as appropriate, minimum potential, values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with 40 CFR 75.31(b)(2) or 40 CFR 75.31(c)(3)*, 40 CFR 75, Appendix D, Section 2.4*, or 40 CFR 75, Appendix E, Section 2.5*, as applicable.

(2) The owner or operator of a CAIR NO_X unit that does not meet the applicable compliance date set forth in subsection (b)(3) for any monitoring system under subsection (b)(1) shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in 40 CFR 75, Subpart D*, 40 CFR 75, Subpart H*, 40 CFR, Appendix D*, or 40 CFR, Appendix E*, in lieu of the maximum potential or, as appropriate, minimum potential values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after construction or installation under subsection (c)(3).

(e) The following shall apply to any monitoring system, alternative monitoring system, alternative reference method, or any other alternative for a CEMS required under this rule:

(1) No owner or operator of a CAIR NO_X unit shall use

any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this section without having obtained prior written approval in accordance with subsection (o).

(2) No owner or operator of a CAIR NO_X unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section and 40 CFR 75*.

(3) No owner or operator of a CAIR NO_X unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this section and 40 CFR 75*.

(4) No owner or operator of a CAIR NO_X unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this section, except under any one of the following circumstances:

(A) During the period that the unit is covered by an exemption under section 3 of this rule.

(B) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section and 40 CFR 75*, by the department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system.

(C) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with subsection (h)(3)(A).

(f) The owner or operator of a CAIR NO_X unit shall be exempt from the initial certification requirements of subsection (h) for a monitoring system under subsection (b)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with 40 CFR 75*.

(2) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21* and 40 CFR 75, Appendix B*, 40 CFR 75, Appendix D*, and 40 CFR 75, Appendix E* are fully met for the certified monitoring system described in subsection (b)(1).

The recertification provisions of this subsection and subsections (g) through (j) shall apply to a monitoring system under subsection (b)(1) exempt from initial certification requirements under this subsection.

(g) If the U.S. EPA has previously approved a petition under 40 CFR 75.17(a)* or 40 CFR 75.17(a)(b)* for apportioning the NO_X emission rate measured in a common stack or a petition under 40 CFR 75.66* for an alternative to a requirement in 40 CFR 75.12* or 40 CFR 75.17*, the CAIR designated representative shall resubmit the petition to the U.S. EPA under subsection (o)(1) to determine whether the approval applies under the CAIR NO_X annual trading program.

(h) Except as provided in subsection (f), the owner or operator of a CAIR NO_X unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system, which is a continuous emission monitoring system and an excepted monitoring system under 40 CFR 75, Appendix D* and 40 CFR 75, Appendix E*, under subsection (b)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19* or that qualifies to use an alternative monitoring system under 40 CFR 75, Subpart E* shall comply with the procedures in subsection (i) or (j) respectively.

(1) The owner or operator shall ensure that each continuous monitoring system under subsection (b)(1), including the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20* by the applicable deadline in subsection (c). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this section in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20* is required.

(2) Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under subsection (b)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21* or 40 CFR 75, Appendix B*, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b)*. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b)*. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_X monitoring system under 40 CFR 75, Appendix E*, under subsection (b)(1) are subject to the recertification requirements in 40 CFR 75.20(g)(6)*.

(3) Clauses (A) through (D) apply to both initial certifica-

tion and recertification of a continuous monitoring system under subsection (b)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with the word "recertified," and follow the procedures in 40 CFR 75.20(b)(5)* and 40 CFR 75.20(g)(7)* in lieu of the procedures in clause (E) of this subdivision. Requirements for the certification approval process for initial certification and recertification, and loss of certification are as follows:

(A) The CAIR designated representative shall submit to the department, the U.S. EPA Region V, and the U.S. EPA written notice of the dates of certification testing, in accordance with subsection (m).

(B) The CAIR designated representative shall submit to the department a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63*.

(C) The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3)*. A provisionally certified monitoring system may be used under the CAIR NO_X annual trading program for a period not to exceed one hundred twenty (120) days after receipt by the department of the complete certification application for the monitoring system under clause (B). Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR 75*, shall be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of the date of receipt of the complete certification application by the department.

(D) The department shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under clause (B). In the event the department does not issue such a notice within such one hundred twenty (120) day period, each monitoring system that meets the applicable performance requirements of 40 CFR 75* and is included in the certification application shall be deemed certified for use under the CAIR NO_X annual trading program.

(i) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75*, then the department shall issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(ii) If the certification application is not complete, then the department shall issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under item (iii). The one hundred twenty (120) day review period shall not begin before receipt of a complete certification application.

(iii) If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR 75* or if the certification application is incomplete and the requirement for disapproval under item (ii) is met, then the department shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification, as defined under 40 CFR 75.20(a)(3)*. The owner or operator shall follow the procedures for loss of certification in clause (E) for each monitoring system that is disapproved for initial certification.

(iv) The department or, for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the U.S. EPA may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (l).

(E) If the department or the U.S. EPA issues a notice of disapproval of a certification application under clause (D)(iii) or a notice of disapproval of certification status under clause (D)(iv), then the following shall apply:

(i) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii)*, 40 CFR 75.20(g)(7)*, or 40 CFR 75.21(e)* and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i)* or 40 CFR 75.20(g)(7)*:

(AA) For a disapproved NO_X emission rate, NO_X-diluent, system, the maximum potential NO_X emission rate, as defined in 40 CFR 72.2*.

(BB) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in 40 CFR 75, Appendix A, Sections 2.1.2.1 and 2.1.4.1*.

(CC) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2

concentration or the minimum potential O_2 concentration, as applicable, as defined in 40 CFR 75, Appendix A, Sections 2.1.5, 2.1.3.1, and 2.1.3.2*.

(DD) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in 40 CFR 75, Appendix D, Section 2.4.2.1*.

(EE) For a disapproved excepted NO_X monitoring system under 40 CFR 75, Appendix E*, the fuel-specific maximum potential NO_X emission rate, as defined in 40 CFR 72.2*.

(ii) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with clauses (A) and (B).

(iii) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's or the U.S. EPA's notice of disapproval, not later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

(i) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under 40 CFR 75.19* shall meet the applicable certification and recertification requirements in 40 CFR 75.19(a)(2)* and 40 CFR 75.20(h)*. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g)*.

(j) The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the U.S. EPA and, if applicable, the department under 40 CFR 75, Subpart E* shall comply with the applicable notification and application procedures of 40 CFR 75.20(f)*.

(k) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR 75*, data shall be substituted using the applicable missing data procedures in 40 CFR, Subpart D*, 40 CFR 75, Subpart H*, 40 CFR 75, Appendix D*, or 40 CFR 75, Appendix E*.

(l) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsections (f) through (j) or the applicable provisions of 40 CFR 75*, both at the time of the initial certification or recertification application submission and at the time of the audit, the department or, for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the U.S. EPA will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the department or the U.S. EPA. By issuing the notice of disapproval, the department or the U.S. EPA revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in subsections (f) through (j) for each disapproved monitoring system.

(m) The CAIR designated representative for a CAIR NO_X unit shall submit written notice to the department and the U.S. EPA in accordance with 40 CFR 75.61*.

(n) The CAIR designated representative shall comply with all record keeping and reporting requirements in this subsection, the applicable record keeping and reporting requirements under 40 CFR 75.73*, and the requirements of section 6(e) of this rule.

(1) The owner or operator of a CAIR NO_X unit shall comply with requirements of 40 CFR 75.73(c)* and 40 CFR 75.73(e)* and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12, 12(e), and 12(f)(1) of this rule.

(2) The CAIR designated representative shall submit an application to the department within forty-five (45) days after completing all initial certification or recertification tests required under subsections (f) through (j), including the information required under 40 CFR 75.63*.

(3) The CAIR designated representative shall submit quarterly reports as follows:

(A) The CAIR designated representative shall report the NO_X mass emissions data and heat input data for the CAIR NO_X unit, in an electronic quarterly report in a format prescribed by the U.S. EPA, for each calendar quarter beginning with:

(i) for a unit that commences commercial operation before July 1, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008; or

(ii) for a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection (c), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008, through March 31, 2008.

(B) The CAIR designated representative shall submit each quarterly report to the U.S. EPA within thirty (30)

days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.73(f)*.

(C) For CAIR NO_X units that are also subject to an acid rain emissions limitation or the CAIR NO_X ozone season trading program or CAIR SO_2 trading program, quarterly reports shall include the applicable data and information required by 40 CFR 75, Subparts F through H* as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this section.

(4) The CAIR designated representative shall submit to the U.S. EPA a compliance certification, in a format prescribed by the U.S. EPA in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(A) the monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 75*, including the quality assurance procedures and specifications; and

(B) for a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with 40 CFR 75.34(a)(1)*, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR 75, Appendix B* and the substitute data values do not systematically underestimate NO_X emissions.

(o) A petition requesting approval of alternatives to any requirement of this section may be made as follows:

(1) Except as provided in subdivision (3), the CAIR designated representative of a CAIR NO_X unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the U.S. EPA requesting approval to apply an alternative to any requirement of this section. Application of an alternative to any requirement of this section is in accordance with this section only to the extent that the petition is approved in writing by the U.S. EPA, in consultation with the department.

(2) The CAIR designated representative of a CAIR NO_X unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.668* to the department and the U.S. EPA requesting approval to apply an alternative to any requirement of this section. Application of an alternative to any requirement of this section is in accordance with this section only to the extent that the petition is approved in writing by both the department and the U.S. EPA.

(3) The CAIR designated representative of a CAIR NO_X unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 * to the department and the U.S. EPA requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under 40 CFR 75.72*. Application of an alternative to any such requirement is in accordance with this section only to the extent that the petition is approved in writing by both the department and the U.S. EPA.

(p) The owner or operator of a CAIR NO_X unit that monitors and reports NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR 75*.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-1-11)*

326 IAC 24-1-12 CAIR NO_x opt-in units

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

Sec. 12. (a) A CAIR NO_X opt-in unit is a unit that meets all of the following requirements:

(1) Is located in Indiana.

(2) Is not a CAIR NO_X unit under section 1 of this rule and is not covered by a retired unit exemption that is in effect under section 3 of this rule.

(3) Is not covered by a retired unit exemption that is in effect under 40 CFR 72.8*.

(4) Has or is required or qualified to have a Part 70 operating permit or other federally enforceable permit.

(5) Vents all of its emissions to a stack and can meet the monitoring, record keeping, and reporting requirements of section 11 of this rule.

(b) Except as otherwise provided in this rule, a CAIR NO_X opt-in unit shall be treated as a CAIR NO_X unit for purposes of applying such sections 1 through 11 of this rule.

(c) Solely for purposes of applying, as provided in this section, the requirements of section 11 of this rule to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this section, such unit shall be treated as a CAIR NO_X unit before issuance of a CAIR opt-in permit for such unit.

(d) Any CAIR NO_X opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this section, located at the same source as one or more CAIR NO_X units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_X units.

(e) The CAIR designated representative of a unit meeting the requirements for a CAIR NO_X opt-in unit in subsection (a) may apply for an initial CAIR opt-in permit at any time, except as provided under subsection (h)(8) and (h)(9), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under section 7(c) of this rule.

(2) A certification, in a format specified by the department, that the unit:

(A) is not a CAIR NO_X unit under section 1 of this rule and is not covered by a retired unit exemption that is in effect under section 3 of this rule;

(B) is not covered by a retired unit exemption that is in effect under 40 CFR 72.8*;

(C) vents all of its emissions to a stack; and

(D) has documented heat input for more than eight hundred seventy-six (876) hours during the six (6) months immediately preceding submission of the CAIR permit application under section 7(c) of this rule.

(3) A monitoring plan in accordance with section 11 of this rule.

(4) A complete certificate of representation under section 6(h) of this rule consistent with subsection (d), if no CAIR designated representative has been previously designated for the source that includes the unit.

(5) A statement, in a format specified by the department, that the CAIR designated representative requests that the unit be allocated CAIR NO_X allowances under subsection (j)(4), subject to the conditions in subsections (f)(10) and (h)(8).

The CAIR designated representative of a CAIR NO_X opt-in unit shall submit a complete CAIR permit application under section 7(c) of this rule to renew the CAIR opt-in unit permit in accordance with 327 IAC 2-7 or 327 IAC 2-8, if applicable, addressing permit renewal. Unless the department issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR NO_X annual trading program in accordance with subsection (h) or the unit becomes a CAIR NO_X unit under section 1 of this rule, the CAIR NO_X opt-in unit shall remain subject to the requirements for a CAIR NO_X opt-in unit, even if the CAIR designated representative for the CAIR NO_X opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit.

(f) The department shall issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under subsection (e) is submitted in accordance with the following:

(1) The department and the U.S. EPA will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under subsection (e). A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with section 11 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(2) If the department and the U.S. EPA determine that the monitoring plan is sufficient under subdivision (1), the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit and all other applicable parameters, in accordance with section 11 of this rule, starting on the date of certification of the appropriate monitoring systems under section 11 of this rule and continuing until a CAIR opt-in permit is denied under subdivision (8) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X annual trading program in accordance with subsection (h).

(3) The monitoring and reporting under subdivision (2) shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X annual trading program under subdivision (9), during which period monitoring system availability must not be less than ninety percent (90%) under section 11 of this rule and the unit must be in full compliance with any applicable state or federal emissions or emissions-related requirements.

(4) To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with section 11 of this rule for one (1) or more control periods, in addition to the control period under subdivision (2), during which control periods monitoring system availability is not less than ninety percent (90%) under section 11 of this rule and the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements and which control periods begin not more than three (3) years before the unit enters the CAIR NO_X annual trading program under subdivision (9), such information shall be used as provided in subdivisions (5) and (6).

(5) The unit's baseline heat rate shall equal one (1) of the following:

(A) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with subdivisions (2) and (3), the unit's total heat input, in million British thermal units (mmBtu), for the control period.

(B) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with subdivisions (2) through (4), the average of the amounts of the unit's total heat input, in million British thermal units (mmBtu), for the control periods under subdivisions (3) and (4).

(6) The unit's baseline NO_X emission rate shall equal one (1) of the following:

(A) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with subdivisions (2) and (3), the unit's NO_X

emissions rate, in pounds per million British thermal units (lb/mmBtu), for the control period.

(B) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with subdivisions (3) through (4), and the unit does not have add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate in pounds per million British thermal units (lb/mmBtu), for the control periods under subdivisions (3) and (4).

(C) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with subdivisions (2) through (4), and the unit has add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate in pounds per million British thermal units (lb/mmBtu), for such control periods during which the unit has add-on NO_X emission controls.

(7) After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under subdivisions (5) and (6) and if the department determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X opt-in unit in subsection (a) and meets the elements certified in subsection (e)(2), the department shall issue a CAIR opt-in permit. The department shall provide a copy of the CAIR opt-in permit to the U.S. EPA, who will then establish a compliance account for the source that includes the CAIR NO_X opt-in unit unless the source already has a compliance account.

(8) Notwithstanding subdivisions (1) through (7), if at any time before issuance of a CAIR opt-in permit for the unit, the department determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_X opt-in unit in subsection (a) or meets the elements certified in subsection (e)(2), the department shall issue a denial of a CAIR NO_X opt-in permit for the unit.

(9) A unit for which an initial CAIR opt-in permit is issued by the department shall become a CAIR NO_X opt-in unit, and a CAIR NO_X unit, as of the later of January 1, 2009, or January 1 of the first control period during which such CAIR opt-in permit is issued.

(10) If a CAIR designated representative requests, and the department issues, a CAIR opt-in permit providing for, allocation to a CAIR NO_X opt-in unit of CAIR NO_X allowances under subsection (j)(4) and such unit is repowered after its date of entry into the CAIR NO_X annual trading program under subdivision (9), the repowered unit shall be treated as a CAIR NO_X opt-in unit replacing the original CAIR NO_X opt-in unit, as of the date of start-up of the repowered unit's combustion chamber. Notwithstanding subdivisions (5) and (6), as of the date of start-up, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X emission rate as the original CAIR NO_X opt-in unit, and the original CAIR NO_X opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR NO_X unit.

(g) The following shall apply to the content of each CAIR opt-in permit:

(1) Each opt-in permit shall contain:

(A) All elements required for a complete CAIR permit application under section 7(c) of this rule.

(B) The certification in subsection (e)(2).

(C) The unit's baseline heat input under subsection (f)(5).

(D) The unit's baseline NO_X emission rate under subsection (f)(6).

(E) A statement whether the unit is to be allocated CAIR NO_X allowances under subsection (j)(4), subject to the conditions in subsections (f)(10) and (h).

(F) A statement that the unit may withdraw from the CAIR NO_X annual trading program only in accordance with subsection (h).

(G) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of subsection (i).

(2) Each CAIR opt-in permit is deemed to incorporate automatically the definitions under section 2 of this rule and, upon recordation by the U.S. EPA under this section and sections 9 and 10 of this rule, every allocation, transfer, or deduction of CAIR NO_X allowances to or from the compliance account of the source that includes a CAIR NO_X opt-in unit covered by the CAIR opt-in permit.

(3) The CAIR opt-in permit shall be included, in a format prescribed by the department, in the CAIR permit for the source where the CAIR opt-in unit is located.

(h) The following requirements must be satisfied in order to withdraw an opt-in unit from the CAIR NO_X annual trading program:

(1) Except as provided under subdivision (8), a CAIR NO_X opt-in unit may withdraw from the CAIR NO_X annual trading program, but only if the department issues a notification to the CAIR designated representative of the CAIR NO_X opt-in unit of the acceptance of the withdrawal of the CAIR NO_X opt-in unit in accordance with subdivision (6).

(2) In order to withdraw a CAIR opt-in unit from the CAIR NO_X annual trading program, the CAIR designated representative of the CAIR NO_X opt-in unit shall submit to the department a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least four (4) years after December 31 of the year of entry into the CAIR NO_X annual trading program under subsection (f)(9). The request must be submitted not later than ninety (90) days before the requested effective date of withdrawal.

(3) Before a CAIR NO_X opt-in unit covered by a request under subdivision (1) may withdraw from the CAIR NO_X annual trading program and the CAIR opt-in permit may be terminated under subdivision (7), the following conditions must be met:

(A) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X opt-in unit must meet the requirement to hold CAIR NO_X allowances under section 4(c) of this rule and cannot have any excess emissions.

(B) After the requirement for withdrawal under clause (A) is met, the U.S. EPA will deduct from the compliance account of the source that includes the CAIR NO_X opt-in unit CAIR NO_X allowances equal in amount to, and allocated for, the same or a prior control period as any CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under subsection (j) for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X units at the source, the U.S. EPA will close the compliance account, and the owners and operators of the CAIR NO_X opt-in unit may submit a CAIR NO_X allowance transfer for any remaining CAIR NO_X allowances to another CAIR NO_X allowance tracking system in accordance with section 10 of this rule.

(4) After the requirements for withdrawal under subdivisions (2) and (3) are met, including deduction of the full amount of CAIR NO_X allowances required, the department shall issue a notification to the CAIR designated representative of the CAIR NO_X opt-in unit of the acceptance of the withdrawal of the CAIR NO_X opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(5) If the requirements for withdrawal under subdivisions (2) and (3) are not met, the department shall issue a notification to the CAIR designated representative of the CAIR NO_X opt-in unit that the CAIR NO_X opt-in unit's request to withdraw is denied. Such CAIR NO_X opt-in unit shall continue to be a CAIR NO_X opt-in unit.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the CAIR permit covering the CAIR NO_X opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under subdivision (4). The unit shall continue to be a CAIR NO_X opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_X annual trading program concerning any control periods for which the unit is a CAIR NO_X opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(7) If the department denies the CAIR NO_X opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with subdivisions (2) and (3).

(8) Notwithstanding subdivisions (1) through (7), a CAIR NO_X opt-in unit shall not be eligible to withdraw from the CAIR NO_X annual trading program if the CAIR designated representative of the CAIR NO_X opt-in unit requests, and the department issues, a CAIR NO_X opt-in permit providing for, allocation to the CAIR NO_X opt-in unit of CAIR NO_X allowances under subsection (j)(4).

(9) Once a CAIR NO_X opt-in unit withdraws from the CAIR NO_X annual trading program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under subsection (e) for such CAIR NO_X opt-in unit before the date that is four (4) years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit shall be treated as an initial application for a CAIR opt-in permit under subsection (f).

(i) When a CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule, then the CAIR designated representative shall notify, in writing, the department and the U.S. EPA of such change in the CAIR NO_X opt-in unit's regulatory status, within thirty (30) days of such change. If there is a change in the regulatory status, the department and the U.S. EPA will take the following actions concerning the CAIR NO_X opt-in source:

(1) When the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule, the department shall revise the CAIR NO_X opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under section 7(d) and (7)(e) of this rule as of the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account of the source that includes the CAIR NO_X opt-in unit that becomes a CAIR NO_X unit under section 1 of this rule, CAIR NO_X allowances equal in amount to and allocated for the same or a prior control period as follows:

(A) Any CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under subsection (j) for any control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule.

(B) If the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule is not December 31, the CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under subsection (j) for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(3) The CAIR designated representative shall ensure that the compliance account of the source that includes the

CAIR NO_X unit that becomes a CAIR NO_X unit under section 1 of this rule contains the CAIR NO_X allowances necessary for completion of the deduction under subdivision (2).

(4) For every control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule, the CAIR NO_X opt-in unit shall be treated, solely for purposes of CAIR NO_X allowance allocations under section 8(c) of this rule, as a unit that commences operation on the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule and shall be allocated CAIR NO_X allowances under section 8(c) of this rule.

(5) Notwithstanding subdivision (4), if the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule is not January 1, the following amount of CAIR NO_X allowances shall be allocated to the CAIR NO_X opt-in unit, as a CAIR NO_X unit, under section 8(c) of this rule for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule:

(A) the amount of CAIR NO_X allowances otherwise allocated to the CAIR NO_X opt-in unit, as a CAIR NO_X unit, under section 8(c) of this rule for the control period multiplied by;

(B) the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under section 1 of this rule, divided by the total number of days in the control period; and

(C) rounded to the nearest whole allowance, as appropriate.

(j) The department shall allocate CAIR NO_X allowances to CAIR NO_X opt-in sources as follows:

(1) When the CAIR opt-in permit is issued under subsection (f)(7), the department shall allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit, and submit to the U.S. EPA the allocation for the control period in which a CAIR NO_X opt-in unit enters the CAIR NO_X annual trading program under subsection (f)(9), in accordance with subdivision (3) or (4).

(2) By not later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_X annual trading program under subsection (f)(9) and October 31 of each year thereafter, the department shall allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit, and submit to the U.S. EPA the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X opt-in unit, in accordance with subdivision (3) or (4).

(3) For each control period for which a CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances, the department shall allocate in accordance with the following procedures:

(A) The heat input, in million British thermal units (mmBtu), used for calculating the CAIR NO_X allowance allocation shall be the lesser of the following:

(i) The CAIR NO_X opt-in unit's baseline heat input determined under subsection (f)(9).

(ii) The CAIR NO_X opt-in unit's heat input, as determined in accordance with section 11 of this rule, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_X opt-in unit enters the CAIR NO_X annual trading program under subsection (f)(9).

(B) The NO_X emission rate, in million British thermal units (mmBtu), used for calculating CAIR NO_X allowance allocations shall be the lesser of the following:

(i) The CAIR NO_X opt-in unit's baseline NO_X emissions rate, in pounds per million British thermal units (lb/mmBtu), determined under subsection (f)(6) and multiplied by seventy percent (70%).

(ii) The most stringent state or federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period for which CAIR NO_X allowances are to be allocated.

(C) The department shall allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under clause (A), multiplied by the NO_X emission rate under clause (B), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(4) Notwithstanding subdivision (3), if the CAIR designated representative requests, and if the department issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X opt-in unit of CAIR NO_X allowances under this subdivision, subject to the conditions in subsections (f)(10) and (h), the department shall allocate to the CAIR NO_X opt-in unit as follows:

(A) For each control period in 2009 through 2014 the CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances as follows:

(i) The heat input, in million British thermal units (mmBtu), used for calculating CAIR NO_X allowance allocations shall be determined as described in subdivision (3)(A).

(ii) The NO_X emission rate, in pounds per million British thermal units (lb/mmBtu), used for calculating CAIR NO_X allowance allocations shall be the lesser of the following:

(AA) The CAIR NO_X opt-in unit's baseline NO_X emissions rate, in pounds per million British thermal units (lb/mmBtu), determined under subsection (f)(6).

(BB) The most stringent state or federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period in which the CAIR NO_X opt-in unit enters the CAIR NO_X annual trading program under subsection (f)(9).

(iii) The department shall allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equal

to the heat input under item (i), multiplied by the NO_X emission rate under item (ii), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(B) For each control period in 2015 and thereafter the CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances as follows:

(i) The heat input, in million British thermal units (mmBtu), used for calculating the CAIR NO_X allowance allocations shall be determined as described in subdivision (3)(A).

(ii) The NO_X emission rate, in pounds per million British thermal units (lb/mmBtu), used for calculating the CAIR NO_X allowance allocation shall be the lesser of the following:

(AA) Fifteen-hundredths (0.15) pounds per million British thermal units (lb/mmBtu).

(BB) The CAIR NO_X opt-in unit's baseline NO_X emissions rate, in pounds per million British thermal units (lb/mmBtu), determined under subsection (f)(6).

(CC) The most stringent state or federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period for which CAIR NO_X allowances are to be allocated.

(iii) The department shall allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input item (i), multiplied by the NO_X emission rate under item (ii), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(5) The U.S. EPA will record, in the compliance account of the source that includes the CAIR NO_X opt-in unit, the CAIR NO_X allowances allocated by the department to the CAIR NO_X opt-in unit under subdivision (1).

(6) By December 1 of the control period in which a CAIR opt-in unit enters the CAIR NO_X annual trading program under subsection (f)(9) and December 1 of each year thereafter, the U.S. EPA will record, in the compliance account of the source that includes the CAIR NO_X opt-in unit, the CAIR NO_X allowances allocated by the department to the CAIR NO_X opt-in unit under subdivision (2).

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-1-12)*

Rule 2. Clean Air Interstate Rule (CAIR) Sulfur Dioxide Trading Program

326 IAC 24-2-1 Applicability

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

Sec. 1. (a) This rule establishes a SO_2 emissions budget and SO_2 trading program. The following units shall be CAIR SO_2 units, and any source that includes one (1) or more such units shall be a CAIR SO_2 source, and shall be subject to the requirements of this rule, except as provided in subsection (b):

(1) Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts producing electricity for sale.

(2) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under subdivision (1), is not a CAIR SO_2 unit begins to serve a generator with nameplate capacity of more than twenty-five (25) megawatts producing electricity for sale, the unit shall become a CAIR SO_2 unit on the date on which it first serves such generator.

(b) Units that meet the requirements set forth in subdivision (1), (2), or (3) shall not be CAIR SO_2 units.

(1) Any unit:

(A) qualifying as a cogeneration unit during the twelve (12) month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) not serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts supplying in any calendar year more than one-third (⅓) of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours, whichever is greater, to any utility power distribution system for sale.

If a unit qualifies as a cogeneration unit during the twelve (12) month period starting on the date the unit first produces electricity and meets the requirements of subdivision (1)(A) and (1)(B) for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit no longer meets the requirements of clause (B).

(2) Any unit commencing operation before January 1, 1985:

(A) qualifying as a solid waste incineration unit; and

(B) with an average annual fuel consumption of nonfossil fuel for 1985-1987 exceeding eighty percent (80%), on a British thermal units basis, and an average annual fuel consumption of nonfossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%), on a British thermal units basis.

(3) Any unit commencing operation on or after January 1, 1985:

(A) qualifying as a solid waste incineration unit; and

(B) with an average annual fuel consumption of nonfossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%), on a British thermal units basis, and an average annual fuel consumption of nonfossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%), on a British thermal units basis.

If the unit qualifies as a solid waste incineration unit and meets the requirements of subdivision (2) or (3) for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(Air Pollution Control Board; 326 IAC 24-2-1)

326 IAC 24-2-2 Definitions

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

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

(1) "Account number" means the identification number given by the U.S. EPA to each CAIR SO_2 allowance tracking system account.

(2) "Acid rain emissions limitation" means a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program.

(3) "Acid rain program" means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the U.S. EPA under Title IV of the Clean Air Act and 40 CFR 72 through 78*.

(4) "Allocate" or "allocation" means, with regard to CAIR SO_2 allowances issued under the acid rain program, the determination by the U.S. EPA of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit and, with regard to CAIR SO_2 allowances issued under section 12(j) of this rule, the determination by the department of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit.

(5) "Allowance transfer deadline" means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR SO_2 allowance transfer must be submitted for recordation in a CAIR SO_2 source's compliance account in order to be used to meet the source's CAIR SO_2 emissions limitation for such control period in accordance with section 8(j) and 8(k) of this rule.

(6) "Alternate CAIR designated representative" means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with sections 6 and 11 of this rule, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO_2 trading program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X annual trading program. If the CAIR SO_2 source is also a CAIR NO_X ozone season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X ozone season trading program. If the CAIR SO_2 source is also subject to the acid rain program, then this natural person shall be the same person as the alternate designated representative under the acid rain program. If the CAIR SO_2 source is also subject to the mercury budget trading program, then this natural person shall be the same person as the alternate mercury designated representative under the mercury budget trading program.

(7) "Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under section 10 of this rule, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by section 10 of this rule.

(8) "Boiler" means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(9) "Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

(10) "CAIR authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with sections 6 and 11 of this rule, to transfer and otherwise dispose of CAIR SO_2 allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

(11) "CAIR designated representative" means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with sections 6 and 11 of this rule, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO_2 trading program. If the CAIR

SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X annual trading program. If the CAIR SO_2 source is also a CAIR NO_X ozone season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X ozone season trading program. If the CAIR SO_2 source is also subject to the acid rain program, then this natural person shall be the same person as the designated representative under the acid rain program. If the CAIR SO_2 source is also subject to the mercury budget trading program, then this natural person shall be the same person as the alternate mercury designated representative under the mercury budget trading program.

(12) "CAIR NO_X annual trading program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the U.S. EPA in accordance with 326 IAC 24-1 and 40 CFR 51.123*, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

(13) "CAIR NO_X ozone season source" means a source that includes one (1) or more CAIR NO_X ozone season units.

(14) "CAIR NO_X ozone season trading program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the U.S. EPA in accordance with 326 IAC 24-3 and 40 CFR 51.123*, as a means of mitigating interstate transport of ozone and nitrogen oxides.

(15) "CAIR NO_X ozone season unit" means a unit that is subject to the CAIR NO_X ozone season trading program under 326 IAC 24-3-1 and a CAIR NO_X ozone season opt-in unit under 326 IAC 24-3-12.

(16) "CAIR NO_X source" means a source that includes one (1) or more CAIR NO_X units.

(17) "CAIR NO_X unit" means a unit that is subject to the CAIR NO_X annual trading program under 326 IAC 24-1-1 and a CAIR NO_X opt-in unit under 326 IAC 24-1-12.

(18) "CAIR permit" means the legally binding and federally enforceable written document, or portion of such document, issued by the department under section 7 of this rule, including any permit revisions, specifying the CAIR SO_2 trading program requirements applicable to a CAIR SO_2 source, to each CAIR SO_2 unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

(19) "CAIR SO_2 allowance" means a limited authorization issued by the U.S. EPA under the acid rain program, or by a department under section 11(j) of this rule, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO_2 trading program as follows:

(A) For one (1) CAIR SO_2 allowance allocated for a control period in a year before 2010, one (1) ton of sulfur dioxide, except as provided in section 11(k) of this rule.

(B) For one (1) CAIR SO_2 allowance allocated for a control period in 2010 through 2014, fifty-hundredths (0.50) ton of sulfur dioxide, except as provided in section 11(k) of this rule.

(C) For one (1) CAIR SO_2 allowance allocated for a control period in 2015 or later, thirty-five hundredths (0.35) ton of sulfur dioxide, except as provided in section 11(k) of this rule.

An authorization to emit sulfur dioxide that is not issued under the acid rain program or under the provisions of a state implementation plan that is approved under 40 CFR 51.124(o)(1) or 40 CFR 51.124(o)(2)* shall not be a CAIR SO_2 allowance.

(20) "CAIR SO_2 allowance deduction" or "deduct CAIR SO_2 allowances" means the permanent withdrawal of CAIR SO_2 allowances by the U.S. EPA from a compliance account in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO_2 units at a CAIR SO_2 source for a control period, determined in accordance with section 10 of this rule, or to account for excess emissions.

(21) "CAIR SO_2 allowances held" or "hold CAIR SO_2 allowances" means the CAIR SO_2 allowances recorded by the U.S. EPA, or submitted to the U.S. EPA for recordation, in accordance with sections 8, 9, and 11 of this rule or 40 CFR 73*, in a CAIR SO_2 allowance tracking system account.

(22) "CAIR SO_2 allowance tracking system" means the system by which the U.S. EPA records allocations, deductions, and transfers of CAIR SO_2 allowances under the CAIR SO_2 trading program. This is the same system as the allowance tracking system under 40 CFR 72.2* by which the U.S. EPA records allocations, deduction, and transfers of acid rain SO_2 allowances under the acid rain program.

(23) "CAIR SO_2 allowance tracking system account" means an account in the CAIR SO_2 allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO_2 allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

(24) "CAIR SO_2 emissions limitation" means, for a CAIR SO_2 source, the tonnage equivalent of the CAIR SO_2 allowances available for deduction for the source under section 11(j) and 11(k) of this rule for a control period.

(25) "CAIR SO_2 source" means a source that includes one (1) or more CAIR SO_2 units.

(26) "CAIR SO_2 trading program" means a multistate sulfur dioxide air pollution control and emission reduction program approved and administered by the U.S. EPA in accordance with this rule and 40 CFR 51.124*, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

(27) "CAIR SO_2 unit" means a unit that is subject to the

CAIR SO_2 trading program under section 1 of this rule and, except for purposes of section 3 of this rule, a CAIR SO_2 opt-in unit under section 11 of this rule.

(28) "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

(29) "Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal.

(30) "Coal-fired" means combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel.

(31) "Cogeneration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(A) having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(B) producing during the twelve (12) month period starting on the date the unit first produces electricity and during any calendar year after the calendar in which the unit first produces electricity.

(i) For a topping-cycle cogeneration unit:

(A) useful thermal energy not less than five percent (5%) of total energy output; and

(B) useful power that, when added to one-half (½) of useful thermal energy produced, is not less than forty-two and one-half percent (42.5%) of total energy input, if useful thermal energy produced is fifteen percent (15%) or more of total energy output, or not less than forty-five percent (45%) of total energy input, if useful thermal energy produced is less than fifteen percent (15%) of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than forty-five percent (45%) of total energy input.

(32) "Combustion turbine" means:

(A) an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(B) if the enclosed device under clause (A) is combined cycle, any associated heat recovery steam generator and steam turbine.

(33) "Commence commercial operation" means, with regard to a unit serving a generator:

(A) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in section 3 of this rule.

(i) For a unit that is a CAIR SO_2 unit under section 1 of this rule on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a CAIR SO_2 unit under section 1 of this rule on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered; the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this clause or clause (B) or (C), as appropriate.

(B) Notwithstanding subdivision (1), and except as provided in section 3 of this rule, for a unit that is not a CAIR SO_2 unit under section 1 of this rule on the later of November 15, 1990, or date the unit commences commercial operation as defined in subdivision (1) and is not a unit under subdivision (3), the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO_2 unit under section 1 of this rule.

(i) For a unit with a date for commencement of commercial operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered; the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in clause (A), this clause, or clause (C), as appropriate.

(C) Notwithstanding subdivision (1) and except as provided in section 11(f)(10) of this rule, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 11 of this rule, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under section 11(f)(2) of this rule.

(i) For a unit with a date for commencement of commercial operation as defined in subdivision (3) and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in subdivision (3) and that is subsequently replaced by a unit at the same source, for example, repowered; the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined

in clause (A) or (B) or this clause, as appropriate.

(D) Notwithstanding clauses (A) through (C), for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

(34) "Commence operation" means:

(A) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in section 3 of this rule.

(i) For a unit that undergoes a physical change, other than replacement of the unit by a unit at the same source, after the date the unit commences operation as defined in this clause, such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is replaced by a unit at the same source, for example, repowered, after the date the unit commences operation as defined in this clause, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in this clause or clause (B) or (C), as appropriate.

(B) Notwithstanding clause (A) and except as provided in section 3 of this rule, but not on the later of November 15, 1990, or for a unit that is not a CAIR SO_2 unit under section 1 of this rule on the date the unit commences operation as defined in clause (A) and is not a unit under clause (C), the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR SO_2 unit under section 1 of this rule.

(i) For a unit with a date for commencement of operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in clause (A), this clause, or clause (C), as appropriate.

(C) Notwithstanding clause (A), and except as provided in section 10(f)(10) or 11(i) of this rule, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 11 of this rule, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under section 11(f)(2) of this rule.

(i) For a unit with a date for commencement of operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in clause (A) or (B) or this clause, as appropriate.

(35) "Common stack means" a single flue through which emissions from two (2) or more units are exhausted.

(36) "Compliance account" means a CAIR SO_2 allowance tracking system account, established by the U.S. EPA for a CAIR SO_2 source subject to an acid rain emissions limitations under 40 CFR 73.31(a)* or 40 CFR 73.31(b)* or for any other CAIR SO_2 source under section 8 or 11 of this rule, in which any CAIR SO_2 allowance allocations for the CAIR SO_2 units at the source are initially recorded and in which are held any CAIR SO_2 allowances available for use for a control period in order to meet the source's CAIR SO_2 emissions limitation in accordance with section 8(j) and 8(k) of this rule.

(37) "Continuous emission monitoring system" or "CEMS" means the equipment required under section 10 of this rule to sample, analyze, measure, and provide, by means of readings recorded at least once every fifteen (15) minutes, using an automated data acquisition and handling system (DAHS), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration, as applicable, in a manner consistent with 40 CFR 75*. The following systems are the principal types of continuous emission monitoring systems required under section 10 of this rule:

(A) a flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(B) a sulfur dioxide monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

(C) a nitrogen oxides emission rate, or NO_X-diluent, monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas, CO_2 or O_2, monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(D) a moisture monitoring system, as defined in 40 CFR 75.11(b)(2)* and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(E) a carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor, or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived, and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(F) an oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

(38) "Control period" means the period beginning January 1 of a calendar year, except as provided in section 4(c)(2) of this rule, and ending on December 31 of the same year, inclusive.

(39) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the U.S. EPA by the CAIR designated representative and as determined by the U.S. EPA in accordance with section 10 of this rule.

(40) "Excess emissions" means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO_2 units at a CAIR SO_2 source during a control period that exceeds the CAIR SO_2 emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one (1) ton of excess emissions.

(41) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(42) "Fossil-fuel-fired" means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

(43) "General account" means a CAIR SO_2 allowance tracking system account, established under section 8 of this rule, that is not a compliance account.

(44) "Generator" means a device that produces electricity.

(45) "Heat input" means, with regard to a specified period of time, the product, in million British thermal units per unit of time (MMBtu/time) of the gross calorific value of the fuel, in British thermal units per pound (Btu/lb), divided by one million (1,000,000) British thermal units per million British thermal units (Btu/mmBtu) and multiplied by the fuel feed rate into a combustion device, in pounds of fuel per unit of time (lb of fuel/time), as measured, recorded, and reported to the U.S. EPA by the CAIR designated representative and determined by the U.S. EPA in accordance with section 10 of this rule and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(46) "Heat input rate" means the amount of heat input, in million British thermal units (mmBtu), divided by unit operating time, in hours, or, with regard to a specific fuel, the amount of heat input attributed to the fuel, in million British thermal units (mmBtu), divided by the unit operating time, in hours, during which the unit combusts the fuel.

(47) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(A) for the life of the unit;

(B) for a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(C) for a period no less than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(48) "Maximum design heat input" means, starting from the initial installation of a unit, the maximum amount of fuel per hour, in British thermal units per hour (Btu/hr), that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour, in British thermal units per hour (Btu/hr), that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

(49) "Mercury budget trading program" means a multistate mercury air pollution control and emission reduction program approved and administered by the U.S. EPA in accordance with 40 CFR Part 60, Subpart HHHH* and 40 CFR 60.24(h)(6)*, or established by the U.S. EPA, as a means of reducing national mercury emissions.

(50) "Monitoring system" means any monitoring system that meets the requirements of section 10 of this rule, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR 75*.

(51) "Most stringent state or federal SO_2 emissions limitation" means, with regard to a unit, the lowest SO_2 emissions limitation, in terms of pounds per million British thermal units (lb/mmBtu), that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(52) "Nameplate capacity" means, starting from the initial installation of a generator, the maximum electrical generating output, in megawatt electrical (MWe), that the generator is capable of producing on a steady state basis and during continuous operation, when not restricted by seasonal or other deratings, as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output, in megawatt electrical (MWe), that the generator is capable of producing on a steady state basis and during

continuous operation, when not restricted by seasonal or other deratings, such increased maximum amount as specified by the person conducting the physical change.

(53) "Operator" means any person who operates, controls, or supervises a CAIR SO_2 unit or a CAIR SO_2 source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(54) "Owner "means any of the following persons:

(A) with regard to a CAIR SO_2 source or a CAIR SO_2 unit at a source, respectively:

(i) any holder of any portion of the legal or equitable title in a CAIR SO_2 unit at the source or the CAIR SO_2 unit;

(ii) any holder of a leasehold interest in a CAIR SO_2 unit at the source or the CAIR SO_2 unit; or

(iii) any purchaser of power from a CAIR SO_2 unit at the source or the CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, on the revenues or income from such CAIR SO_2 unit; or

(B) with regard to any general account, any person who has an ownership interest with respect to the CAIR SO_2 allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO_2 allowances.

(55) "Potential electrical output capacity" means thirty-three percent (33%) of a unit's maximum design heat input, divided by three thousand four hundred thirteen (3,413) Btu/kilowatt hour, divided by one thousand (1,000) kilowatt hour/megawatt hour, and multiplied by eight thousand seven hundred sixty (8,760) hours/year.

(56) "Receive" or "receipt of" means, when referring to the department or the U.S. EPA, to come into possession of a document, information, or correspondence, whether sent in hard copy or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the department or the U.S. EPA in the regular course of business.

(57) "Recordation", "record", or "recorded" means, with regard to CAIR SO_2 allowances, the movement of CAIR SO_2 allowances by the U.S. EPA into or between CAIR SO_2 allowance tracking system accounts, for purposes of allocation, transfer, or deduction.

(58) "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22*.

(59) "Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(A) atmospheric or pressurized fluidized bed combustion;

(B) integrated gasification combined cycle;

(C) magnetohydrodynamics;

(D) direct and indirect coal-fired turbines;

(E) integrated gasification fuel cells; or

(F) as determined by the U.S. EPA in consultation with the Secretary of Energy, a derivative of one or more of the technologies under clauses (A) through (E) and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

(60) "Sequential use of energy" means:

(A) for a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(B) for a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

(61) "Serial number" means, for a CAIR SO_2 allowance, the unique identification number assigned to each CAIR SO_2 allowance by the U.S. EPA.

(62) "Solid waste incineration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a solid waste incineration units as defined in the Clean Air Act, Section 129(g)(1).

(63) "Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of Section 502(c) of the Clean Air Act, a source, including a source with multiple units, shall be considered a single facility.

(64) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable rule:

(A) in person;

(B) by United States Postal Service; or

(C) by other means of dispatch or transmission and delivery.

Compliance with any submission or service deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(65) "Title V operating permit" or "Part 70 operating permit" means a permit issued under 326 IAC 2-7.

(66) "Title V operating permit regulations" means the rules under 326 IAC 2-7.

(67) "Ton" means two thousand (2,000) pounds. For the purpose of determining compliance with the CAIR SO_2 emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions, or the mass equivalent of the recorded hourly emission rates, in accordance with section

10 of this rule, but with any remaining fraction of a ton equal to or greater than fifty-hundredths (0.50) tons deemed to equal one (1) ton and any remaining fraction of a ton less than fifty-hundredths (0.50) tons deemed to equal zero (0) tons.

(68) "Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

(69) "Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

(70) "Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

(71) "Unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(72) "Unit operating day" means a calendar day in which a unit combusts any fuel.

(73) "Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

(74) "Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process, which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls.

(75) "Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

(A) made available to an industrial or commercial process, not a power production process, excluding any heat contained in condensate return or makeup water;

(B) used in a heating application (for example, space heating or domestic hot water heating); or

(C) used in a space cooling application (that is, thermal energy used by an absorption chiller).

(76) "Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-2-2)*

326 IAC 24-2-3 Retired unit exemptions

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

Sec. 3. (a) This section applies to any CAIR SO_2 unit, other than a SO_2 opt-in source, that is permanently retired.

(1) Any CAIR SO_2 unit that is permanently retired and is not a CAIR SO_2 opt-in unit under section 11 of this rule shall be exempt from the CAIR SO_2 trading program, except for the provisions of this section, and sections 1, 2, 4(c)(4) through 4(c)(8), 5, 8, and 9 of this rule.

(2) The exemption under this section shall become effective the day on which the CAIR SO_2 unit is permanently retired. Within thirty (30) days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the department and shall submit a copy of the statement to the U.S. EPA. The statement shall state, in a format prescribed by the department, that the unit was permanently retired on a specific date and shall comply with the requirements of subsection (b).

(3) After receipt of the statement under subdivision (2), the department shall amend any permit under section 7 of this rule covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision (1) and subsection (b).

(b) A unit exempt under this section shall comply with the following provisions:

(1) The unit shall not emit any sulfur dioxide, starting on the date that the exemption takes effect.

(2) For a period of five (5) years from the date the records are created, the owners and operators of the unit shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The five (5) year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the department or U.S. EPA. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the CAIR designated representative of the unit shall comply with the requirements of the CAIR SO_2 trading program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) If the unit is located at a source that is required, or but for this exemption would be required, to have an operating permit under 326 IAC 2-7, the unit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under section 7(c) of this rule for the unit not less than eighteen (18) months, or such lesser time provided by the department, before the later of January 1, 2010, or the date on which the unit resumes operation.

(5) A unit exempt under this section shall lose its exemption on the earlier of the following dates:

(A) The date on which the CAIR designated representative submits a CAIR permit application for the unit under subdivision (4).

(B) The date on which the CAIR designated representative is required under subdivision (4) to submit a CAIR

permit application for the unit.

(C) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(6) For the purpose of applying monitoring, reporting, and record keeping requirements under section 10 of this rule, a unit that loses its exemption under this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

(Air Pollution Control Board; 326 IAC 24-2-3)

326 IAC 24-2-4 Standard requirements

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

Sec. 4. (a) The owners and operators, and CAIR designated representative of each CAIR SO_2 source shall comply with the following permit requirements:

(1) The CAIR designated representative of each CAIR SO_2 source required to have a permit under 326 IAC 2-7 and each CAIR SO_2 unit required to have a permit under 326 IAC 2-7 at the source shall submit the following to the department:

(A) A complete CAIR permit application under section 7(c) of this rule in accordance with the deadlines specified in section 7(b) of this rule.

(B) Any supplemental information that the department determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR SO_2 source required to have a Part 70 operating permit and each CAIR SO_2 unit required to have a permit under 326 IAC 2-7 at the source shall have a CAIR permit issued by the department under section 7 of this rule for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in section 11 of this rule, the owners and operators of a CAIR SO_2 source that is not otherwise required to have a permit under 326 IAC 2-7 and each CAIR SO_2 unit that is not otherwise required to have a permit under 326 IAC 2-7 are not required to submit a CAIR permit application, and to have a CAIR permit, under section 7 of this rule for such CAIR SO_2 source and such CAIR SO_2 unit.

(b) The owners and operators, and the CAIR designated representative, of each CAIR SO_2 source and CAIR SO_2 unit at the source shall comply with the following monitoring, reporting, and record keeping requirements:

(1) The owners and operators, and the CAIR designated representative, of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall comply with the monitoring, reporting, and record keeping requirements of section 10 of this rule.

(2) The emissions measurements recorded and reported in accordance with section 10 of this rule shall be used to determine compliance by each CAIR SO_2 source with the CAIR SO_2 emission requirements under subsection (c).

(c) The owners and operators, and the CAIR designated representative, of each CAIR SO_2 source and CAIR SO_2 unit at the source shall comply with the following SO_2 emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall hold, in the source's compliance account, CAIR SO_2 allowances available for compliance deductions for the control period under section 8(j) of this rule in an amount not less than the tons of total SO_2 emissions for the control period from all CAIR SO_2 units at the source, as determined in accordance with section 10 of this rule.

(2) A CAIR SO_2 unit shall be subject to the requirements under subdivision (1) for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under section 11(c)(1), 11(c)(2), or 11(c)(5) of this rule and for each control period thereafter.

(3) A CAIR SO_2 allowance shall not be deducted, for compliance with the requirements under subdivision (1), for a control period in a calendar year before the year for which the CAIR SO_2 allowance was allocated.

(4) CAIR SO_2 allowances shall be held in, deducted from, or transferred into or among CAIR SO_2 allowance tracking system accounts in accordance with sections 8 and 9 of this rule.

(5) A CAIR SO_2 allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO_2 trading program. No provision of the CAIR SO_2 trading program, the CAIR permit application, the CAIR permit, or an exemption under section 3 of this rule and no provision of law shall be construed to limit the authority of the department or the U.S. EPA to terminate or limit such authorization.

(6) A CAIR SO_2 allowance does not constitute a property right.

(7) Upon recordation by the U.S. EPA under section 8, 9, or 11 of this rule, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from a CAIR SO_2 source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) If a CAIR SO_2 source emits sulfur dioxide during any control period in excess of the CAIR SO_2 emissions limitation, then:

(1) the owners and operators of the source and each CAIR SO_2 unit at the source shall surrender the CAIR SO_2 allowances required for deduction under section 8(k)(4) of this rule and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable state law; and

(2) each ton of such excess emissions and each day of such control period shall constitute a separate violation of this rule, the Clean Air Act, and applicable state law.

(e) Owners and operators of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall comply with the following record keeping and reporting requirements:

(1) Unless otherwise provided, the owners and operators of the CAIR SO_2 source and each CAIR SO_2 unit at the source shall keep on site at the source each of the following documents for a period of five (5) years from the date the document is created. This period may be extended for cause, at any time before the end of five (5) years, in writing by the department or U.S. EPA.

(A) The certificate of representation under section 6(h) of this rule for the CAIR designated representative for the source and each CAIR SO_2 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such five (5) year period until such documents are superseded because of the submission of a new certificate of representation under section 6(h) of this rule changing the CAIR designated representative.

(B) All emissions monitoring information, in accordance with section 10 of this rule, provided that to the extent that section 10 of this rule provides for a three (3) year period for record keeping, the three (3) year period shall apply.

(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO_2 trading program.

(D) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO_2 trading program or to demonstrate compliance with the requirements of the CAIR SO_2 trading program.

(2) The CAIR designated representative of a CAIR SO_2 source and each CAIR SO_2 unit at the source shall submit the reports required under the CAIR SO_2 trading program, including those under section 10 of this rule.

(f) The owners and operators of each CAIR SO_2 source and each CAIR SO_2 unit shall be liable as follows:

(1) Each CAIR SO_2 source and each CAIR SO_2 unit shall meet the requirements of the CAIR SO_2 trading program.

(2) Any provision of the CAIR SO_2 trading program that applies to a CAIR SO_2 source or the CAIR designated representative of a CAIR SO_2 source shall also apply to the owners and operators of such source and of the CAIR SO_2 units at the source.

(3) Any provision of the CAIR SO_2 trading program that applies to a CAIR SO_2 unit or the CAIR designated representative of a CAIR SO_2 unit shall also apply to the owners and operators of such unit.

(g) No provision of the CAIR SO_2 trading program, a CAIR permit application, a CAIR permit, or an exemption under section 3 of this rule shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO_2 source or CAIR SO_2 unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, or the Clean Air Act. *(Air Pollution Control Board; 326 IAC 24-2-4)*

326 IAC 24-2-5 Computation of time

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) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 trading program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 trading program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO_2 trading program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day. *(Air Pollution Control Board; 326 IAC 24-2-5)*

326 IAC 24-2-6 CAIR designated representative for CAIR SO_2 sources

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) Except as provided under subsection (f), each CAIR SO_2 source, including all CAIR SO_2 units at the source, shall have one (1) and only one (1) CAIR designated representative, with regard to all matters under the CAIR SO_2 trading program concerning the source or any CAIR SO_2 unit at the source.

(b) The CAIR designated representative of the CAIR SO_2 source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO_2 units at the source and shall act in accordance with the certification statement in subsection (h)(4).

(c) Upon receipt by the U.S. EPA of a complete certificate of representation under subsection (h), the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO_2 source represented and each CAIR SO_2 unit at the source in all matters pertaining to the CAIR SO_2 trading program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the

department, the U.S. EPA, or a court regarding the source or unit.

(d) No CAIR permit shall be issued, no emissions data reports shall be accepted, and no CAIR SO_2 allowance tracking system account will be established for a CAIR SO_2 unit at a source, until the U.S. EPA has received a complete certificate of representation under subsection (h) for a CAIR designated representative of the source and the CAIR SO_2 units at the source.

(e) The following shall apply to a submissions made under the CAIR SO_2 trading program:

(1) Each submission under the CAIR SO_2 trading program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO_2 source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.".

(2) The department and U.S. EPA will accept or act on a submission made on behalf of owner or operators of a CAIR SO_2 source or a CAIR SO_2 unit only if the submission has been made, signed, and certified in accordance with subdivision (1).

(f) The following shall apply where the owners or operators of a CAIR SO_2 source choose to designate an alternate CAIR designated representative:

(1) A certificate of representation under subsection (h) may designate one (1) and only one (1) alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(2) Upon receipt by the U.S. EPA of a complete certificate of representation under subsection (h), any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(3) Except in this subsection and sections 2, 6(a) and 6(d), 6(g), 6(h), 8(a) through 8(c), and 11(d) of this rule, whenever the term CAIR designated representative is used in this rule, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

(g) The following shall apply when changing the CAIR designated representative, the alternate CAIR designated representative, or there are changes in the owners or operators:

(1) The CAIR designated representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete certificate of representation under subsection (h). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the U.S. EPA receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(2) The alternate CAIR designated representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete certificate of representation under subsection (h). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the U.S. EPA receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(3) Changes in the owner and operators shall be made as follows:

(A) In the event a new owner or operator of a CAIR SO_2 source or a CAIR SO_2 unit is not included in the list of owners and operators in the certificate of representation under subsection (h), such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the department, the U.S. EPA, or a court, as if the new owner or operator were included in such list.

(B) Within thirty (30) days following any change in the owners and operators of a CAIR SO_2 source or a CAIR SO_2 unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under subsection (h) amending the list of owners and operators to include the change.

(h) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the U.S. EPA:

(1) Identification of the CAIR SO_2 source, and each CAIR SO_2 unit at the source, for which the certificate of representation is submitted.
(2) The name, address, e-mail address, if any, telephone number, and facsimile transmission number, if any, of the CAIR designated representative and any alternate CAIR designated representative.
(3) A list of the owners and operators of the CAIR SO_2 source and of each CAIR SO_2 unit at the source.
(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative: "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO_2 unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 trading program on behalf of the owners and operators of the source and of each CAIR SO_2 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions. I certify that the owners and operators of the source and of each CAIR SO_2 unit at the source shall be bound by any order issued to me by the U.S. EPA, the department, or a court regarding the source or unit. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR SO_2 unit, or where a utility or industrial customer purchases power from a CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO_2 unit at the source; and CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR SO_2 allowances by contract, CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in accordance with the contract.".
(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(i) The following shall apply to objections concerning CAIR designated representatives:
(1) Once a complete certificate of representation under subsection (h) has been submitted and received, the department and the U.S. EPA will rely on the certificate of representation unless and until a superseding complete certificate of representation under subsection (h) is received by the U.S. EPA.
(2) Except as provided in subsection (g)(1) and (g)(2), no objection or other communication submitted to the department or the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the department or the U.S. EPA under the CAIR SO_2 trading program.
(3) Neither the department nor the U.S. EPA will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

(Air Pollution Control Board; 326 IAC 24-2-6)

326 IAC 24-2-7 Permit requirements
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 7. (a) For each CAIR SO_2 source required to have a federally enforceable permit, the permit shall include a CAIR permit administered by the department as follows:
(1) The CAIR portion of the Part 70 permit under 326 IAC 2-7 shall be administered in accordance with 326 IAC 2-7, except as provided otherwise by this section or section 11 of this rule.
(2) Each CAIR permit, including a draft or proposed CAIR permit, if applicable, shall contain, with regard to the CAIR SO_2 source and the CAIR SO_2 units at the source covered by the CAIR permit, all applicable CAIR SO_2 trading program, CAIR NO_x annual trading program, and CAIR NOx ozone season trading program requirements and shall be a complete and separable portion of the Part 70 operating permit.

(b) Submission of CAIR permit applications is as follows:
(1) The CAIR designated representative of any CAIR SO_2 source required to have a Part 70 operating permit shall submit to the department a complete CAIR permit application under subsection (c) for the source covering each CAIR SO_2 unit at the source at least eighteen (18) months before the later of January 1, 2010, or the date on which the CAIR SO_2 unit commences operation.
(2) For a CAIR SO_2 source required to have a Part 70 operating permit, the CAIR designated representative shall submit a complete CAIR permit application under subsection (c) for the source covering each CAIR SO_2 unit at the source to renew the CAIR permit in accordance

with 326 IAC 2-7-4(a)(1)(D), as applicable.

(c) In addition to the requirements of 326 IAC 2-7-4(c), a complete CAIR permit application shall include the following elements concerning the CAIR SO_2 source for which the application is submitted:

(1) Identification of the CAIR SO_2 source.

(2) Identification of each CAIR SO_2 unit at the CAIR SO_2 source.

(3) The standard requirements under section 4 of this rule.

(d) In addition to the requirements under 326 IAC 2-7, each CAIR permit shall contain, in a format prescribed by the department, all elements required for a complete CAIR permit application under subsection (c).

(e) Each CAIR permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA, section 8, 9, or 11 of this rule, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from the compliance account of the CAIR SO_2 source covered by the permit.

(f) The initial CAIR permit covering a CAIR unit for which a complete CAIR permit application is timely submitted under subsection (b) shall become effective upon issuance.

(g) The term of the CAIR permit shall be set by the department, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO_2 source's Part 70 operating permit.

(h) Except as provided in subsection (e), the department shall revise the CAIR permit, as necessary, in accordance with the permit modification and revision provisions under 326 IAC 2-7. *(Air Pollution Control Board; 326 IAC 24-2-7)*

326 IAC 24-2-8 CAIR SO_2 allowance tracking system

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) Except as provided in section 11(f)(7) of this rule, upon receipt of a complete certificate of representation under section 6(h) of this rule, the U.S. EPA will establish a compliance account for the CAIR SO_2 source for which the certificate of representation was submitted unless the source already has a compliance account.

(b) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO_2 allowances. An application for a general account may designate one (1) and only one (1) CAIR authorized account representative and one (1) and only one (1) alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative. The establishment of the general account shall be subject to the following:

(1) A complete application for a general account shall be submitted to the U.S. EPA and shall include the following elements in a format prescribed by the U.S. EPA:

(A) The following information concerning the CAIR authorized account representative and any alternate CAIR authorized account representative:

(i) Name.

(ii) Mailing address.

(iii) E-mail address, if any.

(iv) Telephone number.

(v) Facsimile transmission number, if any.

(B) Organization name and type of organization, if applicable.

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO_2 allowances held in the general account.

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 trading program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the U.S. EPA or a court regarding the general account.".

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(F) Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the application for a general account shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), the following shall apply:

(A) The U.S. EPA will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative

for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO_2 allowances held in the general account in all matters pertaining to the CAIR SO_2 trading program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the U.S. EPA or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(D) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.".

(E) The U.S. EPA will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with clause (D).

(3) The following shall apply to changing the CAIR authorized account representative or alternate CAIR authorized account representative, and changes in persons with ownership interest:

(A) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(B) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(C) In the event a new person having an ownership interest with respect to CAIR SO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the U.S. EPA or a court, as if the new person were included in such list.

(D) Within thirty (30) days following any change in the persons having an ownership interest with respect to CAIR SO_2 allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO_2 allowances in the general account to include the change.

(4) Once a complete application for a general account under subdivision (1) has been submitted and received, the U.S. EPA will rely on the application unless and until a superseding complete application for a general account under subdivision (1) is received by the U.S. EPA.

(5) Except as provided in subdivision (3)(A) or (3)(B), no objection or other communication submitted to the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the U.S. EPA under the CAIR SO_2 trading program.

(6) The U.S. EPA will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

(c) The U.S. EPA will assign a unique identifying number to each account established under subsection (a) or (b).

(d) Following the establishment of a CAIR SO_2 allowance tracking system account, all submissions to the U.S. EPA pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO_2 allowances in the account, shall be made only by the CAIR authorized account representative for the account.

(e) After a compliance account is established under subsection (a) or 40 CFR 73.31(a) or 40 CFR 73.31(b)*, the U.S. EPA will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for each of the thirty (30) years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO_2 allowance allocated for each of the thirty (30) years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with section 9 of this rule or 40 CFR 73, Subpart D*.

(f) In 2011 and each year thereafter, after U.S. EPA has completed all deductions under subsection (k)(1), the U.S. EPA will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for the new thirtieth year, that is, the year that is thirty (30) years after the calendar year for which such deductions are or could be made, and any CAIR SO_2 allowance allocated for the new thirtieth year and transferred to the source in accordance with section 9 of this rule or 40 CFR 73, Subpart D*.

(g) After a general account is established under subsection (b) or 40 CFR 73.31(c)*, the U.S. EPA will record in the general account any CAIR SO_2 allowance allocated for each of the thirty (30) years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with section 9 of this rule or 40 CFR 73, Subpart D*.

(h) In 2011 and each year thereafter, after U.S. EPA has completed all deductions under subsection (k)(1), the U.S. EPA will record in the general account any CAIR SO_2 allowance allocated for the new thirtieth year, that is, the year that is thirty (30) years after the calendar year for which such deductions are or could be made, and transferred to the general account in accordance with section 9 of this rule or 40 CFR 73, Subpart D*.

(i) When recording the allocation of CAIR SO_2 allowances for a CAIR SO_2 unit in a compliance account, the U.S. EPA will assign each CAIR SO_2 allowance a unique identification number that shall include digits identifying the year of the control period for which the CAIR SO_2 allowance is allocated.

(j) The CAIR SO_2 allowances are available to be deducted for compliance with a source's CAIR SO_2 emissions limitation for a control period in a given calendar year only if the CAIR SO_2 allowances:

(1) were allocated for the control period in the year or a prior year;

(2) are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO_2 allowance transfer correctly submitted for recordation under section 9(a) through 9(c) of this rule by the allowance transfer deadline for the control period; and

(3) are not necessary for deductions for excess emissions for a prior control period under subsection (k)(4) and (k)(4) or for deduction under 40 CFR 77*.

(k) The following shall apply to deductions for purposes of compliance with a unit's allocation:

(1) Following the recordation, in accordance with section 9(d) through 9(f) of this rule, of CAIR SO_2 allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the U.S. EPA will deduct from the compliance account CAIR SO_2 allowances available under subsection (j) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(A) For a CAIR SO_2 source subject to an acid rain emissions limitation, the U.S. EPA will, in the following order:

(i) Deduct the amount of CAIR SO_2 allowances, available under subsection (j) and not issued by the department under section 11(j) of this rule, that is required under 40 CFR 73.35(b)* and 40 CFR 73.35(c)*. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction shall be treated as satisfying the requirements of 40 CFR 73.35(b)* and 40 CFR 73.35(c)*.

(ii) Deduct the amount of CAIR SO_2 allowances, available under subsection (j) and not issued by the department under section 11(j) of this rule, that is required under 40 CFR 73.35(d)* and 40 CFR 77.5*. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction shall be treated as satisfying the requirements of 40 CFR 73.35(d)* and 40 CFR 77.5*.

(iii) Treating the CAIR SO_2 allowances deducted under item (ii) as also being deducted under this item, deduct CAIR SO_2 allowances available under subsec-

tion (j), including any issued by the department under section 11(j) of this rule, in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(AA) until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with subdivisions (2) and (3), the number of tons of total sulfur dioxide emissions, determined in accordance with section 10 of this rule, from all CAIR SO_2 units at the source for the control period; or

(BB) if there are insufficient CAIR SO_2 allowances to complete the deductions in subitem (AA), until no more CAIR SO_2 allowances available under subsection (j), including any issued by the department under section 11(j) of this rule, remain in the compliance account.

(B) For a CAIR SO_2 source not subject to an acid rain emissions limitation, the U.S. EPA will deduct CAIR SO_2 allowances available under subsection (j), including any issued by the department under section 11(j) of this rule, in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(i) until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with subdivisions (2) and (3), the number of tons of total sulfur dioxide emissions, determined in accordance with section 10 of this rule, from all CAIR SO_2 units at the source for the control period; or

(ii) if there are insufficient CAIR SO_2 allowances to complete the deductions in item (i), until no more CAIR SO_2 allowances available under subsection (j), including any issued by the department under section 11(j) of this rule, remain in the compliance account.

(2) The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subdivision (1), (4), or (5). Such request shall be submitted to the U.S. EPA by the allowance transfer deadline for the control period and include, in a format prescribed by the U.S. EPA, the identification of the CAIR SO_2 source and the appropriate serial numbers.

(3) The U.S. EPA will deduct CAIR SO_2 allowances under subdivision (1), (4), or (5) from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO_2 allowances by serial number under subdivision (2), on a first-in, first-out (FIFO) accounting basis in the following order:

(A) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation.

(B) Any CAIR SO_2 allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account under section 9 of this rule or 40 CFR 73, Subpart D*, in the order of recordation.

(C) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation.

(D) Any CAIR SO_2 allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account under section 9 of this rule or 40 CFR 73, Subpart D*, in the order of recordation.

(E) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation.

(F) Any CAIR SO_2 allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account under section 9 of this rule or 40 CFR 73, Subpart D*, in the order of recordation.

(4) After making the deductions for compliance under subdivision (1) for a control period in a calendar year in which the CAIR SO_2 source has excess emissions, the U.S. EPA will deduct from the source's compliance account the tonnage equivalent in CAIR SO_2 allowances, allocated for the control period in the immediately following calendar year, including any issued by the department under section 11(j) of this rule, equal to, or exceeding in accordance with subdivisions (2) and (3), three (3) times the number of tons of the source's excess emissions.

(5) Any allowance deduction required under subdivision (4) shall not affect the liability of the owners and operators of the CAIR SO_2 source or the CAIR SO_2 units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable state law.

(6) The U.S. EPA will record in the appropriate compliance account all deductions from such an account under subdivision (1), (4), or (5).

(7) The U.S. EPA may review and conduct independent audits concerning any submission under the CAIR SO_2 trading program and make appropriate adjustments of the information in the submissions.

(8) The U.S. EPA may deduct CAIR SO_2 allowances from or transfer CAIR SO_2 allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision (7).

(l) CAIR SO_2 allowances may be banked for future use or transfer in a compliance account or a general account. Any CAIR SO_2 allowance that is held in a compliance account or a general account shall remain in such account unless and until the CAIR SO_2 allowance is deducted or transferred under subsection (j), (k), or (m) or section 9 of this rule.

(m) The U.S. EPA may, at his or her sole discretion and on

his or her own motion, correct any error in any CAIR SO_2 allowance tracking system account. Within ten (10) business days of making such correction, the U.S. EPA will notify the CAIR authorized account representative for the account.

(n) The CAIR authorized account representative of a general account may submit to the U.S. EPA a request to close the account, which shall include a correctly submitted allowance transfer under section 9(a) through 9(c) of this rule for any CAIR SO_2 allowances in the account to one or more other CAIR SO_2 allowance tracking system accounts.

(o) If a general account has no allowance transfers in or out of the account for a twelve (12) month period or longer and does not contain any CAIR SO_2 allowances, the U.S. EPA may notify the CAIR authorized account representative for the account that the account shall be closed following twenty (20) business days after the notice is sent. The account will be closed after the twenty (20) day period unless, before the end of the twenty (20) day period, the U.S. EPA receives a correctly submitted transfer of CAIR SO_2 allowances into the account under section 9(a) through 9(c) of this rule or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the U.S. EPA good cause as to why the account should not be closed.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-2-8)*

326 IAC 24-2-9 CAIR SO_2 allowance transfers

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) A CAIR authorized account representative seeking recordation of a CAIR SO_2 allowance transfer shall submit the transfer to the U.S. EPA. To be considered correctly submitted, the CAIR SO_2 allowance transfer shall include the following elements, in a format specified by the U.S. EPA:

(1) the account numbers for both the transferor and transferee accounts;

(2) the serial number of each CAIR SO_2 allowance that is in the transferor account and is to be transferred; and

(3) the name and signature of the CAIR authorized account representative of the transferor account and the date signed.

(b) The CAIR authorized account representative for the transferee account shall meet the requirements in subsection (a)(3) by submitting, in a format prescribed by the U.S. EPA, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the U.S. EPA receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the U.S. EPA receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.

(c) The statement under subsection (b) shall include the following: "By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under state or federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the account is received by the U.S. EPA.".

(d) Within five (5) business days, except as provided in subsection (e), of receiving a CAIR SO_2 allowance transfer, the U.S. EPA will record a CAIR SO_2 allowance transfer by moving each CAIR SO_2 allowance from the transferor account to the transferee account as specified by the request, provided the following:

(1) The transfer is correctly submitted under this section.

(2) The transferor account includes each CAIR SO_2 allowance identified by serial number in the transfer.

(e) A CAIR SO_2 allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO_2 allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the U.S. EPA completes the deductions under subsections (j) and (k) for the control period immediately before such allowance transfer deadline.

(f) Where a CAIR SO_2 allowance transfer submitted for recordation fails to meet the requirements of subsection (d), the U.S. EPA will not record such transfer.

(g) The following notification requirements shall apply to CAIR SO_2 allowance transfers:

(1) Within five (5) business days of recordation of a CAIR SO_2 allowance transfer under subsections (d) through (f) the U.S. EPA will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(2) Within ten (10) business days of receipt of a CAIR SO_2 allowance transfer that fails to meet the requirements of subsection (d), the U.S. EPA will notify the CAIR authorized account representatives of both accounts subject to the transfer of the decision not to record the transfer and the reasons for such nonrecordation.

(h) Nothing in this section shall preclude the submission of a CAIR SO_2 allowance transfer for recordation following notification of nonrecordation. *(Air Pollution Control Board; 326 IAC 24-2-9)*

326 IAC 24-2-10 Monitoring and reporting
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 10. (a) The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO_2 unit, shall comply with the monitoring, record keeping, and reporting requirements as provided in this rule and in 40 CFR 75, Subparts F and G*. For purposes of complying with such requirements, the definitions in section 2 of this rule and 40 CFR 72.2* shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system (CEMS) in 40 CFR 75* shall be replaced by the terms CAIR SO_2 unit, CAIR designated representative, and continuous emission monitoring system (CEMS) respectively, as defined in section 2 of this rule. The owner or operator of a unit that is not a CAIR SO_2 unit but that is monitored under 40 CFR 75.16(b)(2)* shall comply with the same monitoring, record keeping, and reporting requirements as a CAIR SO_2 unit.

(b) The owner or operator of each CAIR SO_2 unit shall:
(1) Install all monitoring systems required under this section for monitoring SO_2 mass emissions and individual unit heat input. This includes all systems required to monitor SO_2 emission rate, SO_2 concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with 40 CFR 75.11* and 40 CFR 75.16*.
(2) Successfully complete all certification tests required under subsections (f) through (j) and meet all other requirements of this section and 40 CFR 75* applicable to the monitoring systems under subdivision (1).
(3) Record, report, and quality-assure the data from the monitoring systems under subdivision (1).

(c) The owner or operator shall meet the monitoring system certification and other requirements of subsection (b)(1) and (b)(2) on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subsection (b)(1) on and after the following dates.
(1) For the owner or operator of a CAIR SO_2 unit that commences commercial operation before July 1, 2008, by January 1, 2009.
(2) For the owner or operator of a CAIR SO_2 unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:
(A) January 1, 2009.
(B) The earlier of:
(i) one hundred eighty (180) calendar days after the date on which the unit commences commercial operation; or
(ii) ninety (90) unit operating days after the date on which the unit commences commercial operation.
(3) For the owner or operator of a CAIR SO_2 unit for which construction of a new stack or flue or installation of add-on SO_2 emission controls is completed after the applicable deadline under subdivision (1), (2), (4), or (5), compliance by the earlier of:
(A) one hundred eighty (180) calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO_2 emissions controls; or
(B) ninety (90) unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO_2 emissions controls
(4) Notwithstanding the dates in subdivisions (1) and (2), for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 11 of this rule, by the date specified in section 11(f)(2) through 11(f)(4) of this rule.
(5) Notwithstanding the dates in subdivisions (1) and (2) and solely for purposes of section 4(c)(2) of this rule, for the owner or operator of a CAIR SO_2 opt-in unit under section 11 of this rule, by the date on which the CAIR SO_2 opt-in unit enters the CAIR SO_2 trading program as provided in section 11(f)(9) of this rule.

(d) The following requirements for reporting data applies as follows:
(1) Except as provided in subdivision (2), the owner or operator of a CAIR SO_2 unit that does not meet the applicable compliance date set forth in subsection (c) for any monitoring system under subsection (b)(1) shall, for each such monitoring system, determine, record, and report maximum potential or, as appropriate, minimum potential, values for SO_2 concentration, SO_2 emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO_2 mass emissions and heat input in accordance with 40 CFR 75.31(b)(2) or 40 CFR 75.31(c)(3)*, 40 CFR 75 Section 2.4 of Appendix D*, as applicable.
(2) The owner or operator of a CAIR SO_2 unit that does not meet the applicable compliance date set forth in subsection (b)(3) for any monitoring system under subsection (b)(1) shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in 40 CFR 75, Subpart D* or 40 CFR, Appendix D*, in lieu of the maximum potential or, as appropriate, minimum potential values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subsection (c)(3).

(e) The following shall apply to any monitoring system,

alternative monitoring system, alternative reference method, or any other alternative for a CEMS required under this rule:

(1) No owner or operator of a CAIR SO_2 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this section without having obtained prior written approval in accordance with subsection (o).

(2) No owner or operator of a CAIR SO_2 unit shall operate the unit so as to discharge, or allow to be discharged, SO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section and 40 CFR 75*.

(3) No owner or operator of a CAIR SO_2 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this section and 40 CFR 75*.

(4) No owner or operator of a CAIR SO_2 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this section, except under any one (1) of the following circumstances:

(A) During the period that the unit is covered by an exemption under section 3 of this rule.

(B) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section and 40 CFR 75*, by the department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system.

(C) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with subsection (h)(3)(A).

(f) The owner or operator of a CAIR SO_2 unit shall be exempt from the initial certification requirements of subsection (h) for a monitoring system under subsection (b)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with 40 CFR 75* of this chapter.

(2) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21* and 40 CFR 75.21* and 40 CFR 75, Appendix D* are fully met for the certified monitoring system described in subsection (b)(1).

The recertification provisions of this subsection and subsections (g) through (j) shall apply to a monitoring system under subsection (b)(1) exempt from initial certification requirements under this subsection.

(g) If the U.S. EPA has previously approved a petition under 40 CFR 75.16(b)(2)(ii)* for apportioning the SO_2 emission rate measured in a common stack or a petition under 40 CFR 75.66* for an alternative to a requirement in 40 CFR 75.11* or 40 CFR 75.16*, the CAIR designated representative shall resubmit the petition to the U.S. EPA under subsection (o)(1) to determine whether the approval applies under the CAIR SO_2 trading program.

(h) Except as provided in subsection (f), the owner or operator of a CAIR SO_2 unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system, which is a continuous emission monitoring system and an excepted monitoring system under 40 CFR 75, Appendix D*, under subsection (b)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19* or that qualifies to use an alternative monitoring system under 40 CFR 75, Subpart E* shall comply with the procedures in subsection (i) or (j) respectively.

(1) The owner or operator shall ensure that each continuous monitoring system under subsection (b)(1), including the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20* by the applicable deadline in subsection (c). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this section in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20* is required.

(2) Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under subsection (b)(1) that may significantly affect the ability of the system to accurately measure or record SO_2 mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21* or 40 CFR 75, Appendix B*, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b)*. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b)*. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under subsection (b)(1) is subject to the recertification requirements in 40 CFR 75.20(g)(6)*.

(3) Clauses (A) through (D) apply to both initial certification and recertification of a continuous monitoring system under subsection (b)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word certified with the word "recertified," and follow the procedures in 40 CFR 75.20(b)(5)* and 40 CFR 75.20(g)(7)* in lieu of the procedures in clause (E). Requirements for the certification approval process for initial certification and recertification, and loss of certification are as follows:

(A) The CAIR designated representative shall submit to the department, the appropriate U.S. EPA Regional Office, and the U.S. EPA written notice of the dates of certification testing, in accordance with subsection (m).

(B) The CAIR designated representative shall submit to the department a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63*.

(C) The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3)*. A provisionally certified monitoring system may be used under the CAIR SO_2 trading program for a period not to exceed one hundred twenty (120) days after receipt by the department of the complete certification application for the monitoring system under clause (B). Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR 75*, shall be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of the date of receipt of the complete certification application by the department.

(D) The department shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under clause (B). In the event the department does not issue such a notice within such one hundred twenty (120) day period, each monitoring system that meets the applicable performance requirements of 40 CFR 75* and is included in the certification application shall be deemed certified for use under the CAIR SO_2 trading program.

(i) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75*, then the department shall issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(ii) If the certification application is not complete, then the department shall issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under item (iii). The one hundred twenty (120) day review period shall not begin before receipt of a complete certification application.

(iii) If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR 75* or if the certification application is incomplete and the requirement for disapproval under item (ii) is met, then the department shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification, as defined under 40 CFR 75.20(a)(3)*. The owner or operator shall follow the procedures for loss of certification in clause (E) for each monitoring system that is disapproved for initial certification.

(iv) The department or, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 11 of this rule, the U.S. EPA may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (l).

(E) If the department or the U.S. EPA issues a notice of disapproval of a certification application under clause (D)(iii) or a notice of disapproval of certification status under clause (D)(iv), then the following shall apply:

(i) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii)*, 40 CFR 75.20(g)(7)*, or 40 CFR 75.21(e)* and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i)* or 40 CFR 75.20(g)(7)*:

(AA) For a disapproved SO_2 pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in 40 CFR 75, Appendix A, Sections 2.1.1.1 and 2.1.4.1*.

(BB) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration, as applicable, as defined in 40 CFR 75, Appendix A, Sections 2.1.5, 2.1.3.1, and 2.1.3.2*.

(CC) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in 40

CFR 75, Appendix D, Section 2.4.2.1*.

(ii) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with clauses (A) and (B).

(iii) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's or the U.S. EPA's notice of disapproval, not later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

(i) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under 40 CFR 75.19* shall meet the applicable certification and recertification requirements in 40 CFR 75.19(a)(2)* and 40 CFR 75.20(h)*. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g)*.

(j) The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the U.S. EPA and, if applicable, the department under 40 CFR 75, Subpart E* shall comply with the applicable notification and application procedures of 40 CFR 75.20(f)*.

(k) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR 75*, data shall be substituted using the applicable missing data procedures in 40 CFR, Subpart D* or 40 CFR 75, Appendix D*.

(l) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsections (f) through (j) or the applicable provisions of 40 CFR 75*, both at the time of the initial certification or recertification application submission and at the time of the audit, the department or, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 11 of this rule, the U.S. EPA will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the department or the U.S. EPA. By issuing the notice of disapproval, the department or the U.S. EPA revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in subsections (f) through (j) for each disapproved monitoring system.

(m) The CAIR designated representative for a CAIR SO_2 unit shall submit written notice to the department and the U.S. EPA in accordance with 40 CFR 75.61*.

(n) The CAIR designated representative shall comply with all record keeping and reporting requirements in this subsection, the applicable record keeping and reporting requirements under 40 CFR 75.73*, the applicable record keeping and reporting requirements in 40 CFR 75, Subparts F and G*, and the requirements of section 6(e) of this rule.

(1) The owner or operator of a CAIR SO_2 unit shall comply with requirements of 40 CFR 75.62* and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 11, 11(e), and 11(f)(1) of this rule.

(2) The CAIR designated representative shall submit an application to the department within forty-five (45) days after completing all initial certification or recertification tests required under subsections (f) through (j), including the information required under 40 CFR 75.63*.

(3) The CAIR designated representative shall submit quarterly reports as follows:

(A) The CAIR designated representative shall report the SO_2 mass emissions data and heat input data for the CAIR SO_2 unit, in an electronic quarterly report in a format prescribed by the U.S. EPA, for each calendar quarter beginning with:

(i) for a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009, through March 31, 2009; or

(ii) for a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection (c), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009, through March 31, 2009.

(B) The CAIR designated representative shall submit each quarterly report to the U.S. EPA within thirty (30) days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.64*.

(C) For CAIR SO_2 units that are also subject to an acid rain emissions limitation or the CAIR NO_x ozone season trading program or CAIR NO_x trading program, quarterly reports shall include the applicable data and information required by 40 CFR 75, Subparts F through H* as applicable, in addition to the SO_2 mass

emission data, heat input data, and other information required by this subpart.

(4) The CAIR designated representative shall submit to the U.S. EPA a compliance certification, in a format prescribed by the U.S. EPA in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(A) the monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 75*, including the quality assurance procedures and specifications; and

(B) for a unit with add-on SO_2 emission controls and for all hours where SO_2 data are substituted in accordance with 40 CFR 75.34(a)(1)*, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR 75, Appendix B* and the substitute data values do not systematically underestimate SO_2 emissions.

(o) A petition requesting approval of alternatives to any requirement of this section may be made as follows:

(1) The CAIR designated representative of a CAIR SO_2 unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the U.S. EPA requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this section only to the extent that the petition is approved in writing by the U.S. EPA, in consultation with the department.

(2) The CAIR designated representative of a CAIR SO_2 unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the department and the U.S. EPA requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the department and the U.S. EPA.

(p) The owner or operator of a CAIR SO_2 unit that monitors and reports SO_2 mass emissions using a SO_2 concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR 75*.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-2-10)*

326 IAC 24-2-11 CAIR SO_2 opt-in units

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) A CAIR SO_2 opt-in unit must be a unit that meets the following requirements:

(1) Is located in Indiana.

(2) Is not a CAIR SO_2 unit under section 1 of this rule and is not covered by a retired unit exemption that is in effect under section 3 of this rule.

(3) Is not covered by a retired unit exemption that is in effect under 40 CFR 72.8* and is not an opt-in source under 40 CFR 74*.

(4) Has or is required or qualified to have a Part 70 operating permit or other federally enforceable permit.

(5) Vents all of its emissions to a stack and can meet the monitoring, record keeping, and reporting requirements of section 10 of this rule.

(b) Except as otherwise provided in this rule, a CAIR SO_2 opt-in unit shall be treated as a CAIR SO_2 unit for purposes of applying such sections 1 through 10 of this rule.

(c) Solely for purposes of applying, as provided in this section, the requirements of section 10 to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this section, such unit shall be treated as a CAIR SO_2 unit before issuance of a CAIR opt-in permit for such unit.

(d) Any CAIR SO_2 opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this section, located at the same source as one or more CAIR SO_2 units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO_2 units.

(e) The CAIR designated representative of a unit meeting the requirements for a CAIR SO_2 opt-in unit in subsection (a) may apply for an initial CAIR opt-in permit at any time, except as provided under subsection (h)(8) and (h)(9), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under section 7(c) of this rule.

(2) A certification, in a format specified by the department, that the unit:

(A) is not a CAIR SO_2 unit under section 1 of this rule and is not covered by a retired unit exemption that is in effect under section 3 of this rule;

(B) is not covered by a retired unit exemption that is in effect under 40 CFR 72.8*;

(C) is not and, so long as the unit is a CAIR opt-in unit, shall not become, an opt-in source under 40 CFR 74*;

(D) vents all of its emissions to a stack; and

(E) has documented heat input for more than eight

hundred seventy-six (876) hours during the six (6) months immediately preceding submission of the CAIR permit application under section 7(c) of this rule.

(3) A monitoring plan in accordance with section 10 of this rule.

(4) A complete certificate of representation under section 6(h) of this rule consistent with subsection (d), if no CAIR designated representative has been previously designated for the source that includes the unit.

(5) A statement, in a format specified by the department, whether the CAIR designated representative requests that the unit be allocated CAIR SO_2 allowances under subsection (j)(4), subject to the conditions in subsections (f)(10) and (h)(8).

The CAIR designated representative of a CAIR SO_2 opt-in unit shall submit a complete CAIR permit application under section 7(c) of this rule to renew the CAIR opt-in unit permit in accordance with the department's regulations for Part 70 operating permits. Unless the department issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR SO_2 trading program in accordance with subsection (h) or the unit becomes a CAIR SO_2 unit under section 1 of this rule, the CAIR SO_2 opt-in unit shall remain subject to the requirements for a CAIR SO_2 opt-in unit, even if the CAIR designated representative for the CAIR SO_2 opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit.

(f) The department shall issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under subsection (e) is submitted in accordance with the following:

(1) The department and the U.S. EPA will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under subsection (e). A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the SO_2 emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with section 10 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(2) If the department and the U.S. EPA determine that the monitoring plan is sufficient under subdivision (1), the owner or operator shall monitor and report the SO_2 emissions rate and the heat input of the unit and all other applicable parameters, in accordance with section 10 of this rule, starting on the date of certification of the appropriate monitoring systems under section 10 of this rule and continuing until a CAIR opt-in permit is denied under subdivision (8) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO_2 trading program in accordance with subsection (h).

(3) The monitoring and reporting under subdivision (2) shall include the entire control period immediately before the date on which the unit enters the CAIR SO_2 trading program under subdivision (9), during which period monitoring system availability must not be less than ninety percent (90%) under section 10 of this rule and the unit must be in full compliance with any applicable state or federal emissions or emissions-related requirements.

(4) To the extent the SO_2 emissions rate and the heat input of the unit are monitored and reported in accordance with section 10 of this rule for one or more control periods, in addition to the control period under subdivision (2), during which control periods monitoring system availability is not less than ninety percent (90%) under section 10 of this rule and the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements and which control periods begin not more than three (3) years before the unit enters the CAIR SO_2 trading program under subdivision (9), such information shall be used as provided in subdivisions (5) and (6).

(5) The unit's baseline heat rate shall equal:

(A) if the unit's SO_2 emissions rate and heat input are monitored and reported for only one (1) control period, in accordance with subdivisions (2) and (3), the unit's total heat input, in million British thermal units (mmBtu), for the control period; or

(B) if the unit's SO_2 emissions rate and heat input are monitored and reported for more than one (1) control period, in accordance with subdivisions (2) through (4), the average of the amounts of the unit's total heat input, in million British thermal units (mmBtu), for the control periods under subdivisions (3) and (4).

(6) The unit's baseline SO_2 emission rate shall equal:

(A) if the unit's SO_2 emissions rate and heat input are monitored and reported for only one (1) control period, in accordance with subdivisions (2) and (3), the unit's SO_2 emissions rate, in pounds per million British thermal units (lb/mmBtu), for the control period;

(B) if the unit's SO_2 emissions rate and heat input are monitored and reported for more than one (1) control period, in accordance with subdivisions (3) and (4), and the unit does not have add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate in pounds per million British thermal units (lb/mmBtu), for the control periods under subdivisions (3) and (4); or

(C) if the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with subdivisions (2) through (4), and the unit has add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate in pounds per million British thermal units (lb/mmBtu), for such control periods during which the unit has add-on SO_2 emission controls.

(7) After calculating the baseline heat input and the baseline SO_2 emissions rate for the unit under subdivisions (5) and (6) and if the department determines that the

CAIR designated representative shows that the unit meets the requirements for a CAIR SO_2 opt-in unit in subsection (a) and meets the elements certified in subsection (e)(2), the department shall issue a CAIR opt-in permit. The department shall provide a copy of the CAIR opt-in permit to the U.S. EPA, who will then establish a compliance account for the source that includes the CAIR SO_2 opt-in unit unless the source already has a compliance account.

(8) Notwithstanding subdivisions (1) through (7), if at any time before issuance of a CAIR opt-in permit for the unit, the department determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO_2 opt-in unit in subsection (a) or meets the elements certified in subsection (e)(2), the department shall issue a denial of a CAIR SO_2 opt-in permit for the unit.

(9) A unit for which an initial CAIR opt-in permit is issued by the department shall become a CAIR SO_2 opt-in unit, and a CAIR SO_2 unit, as of the later of January 1, 2010, or January 1 of the first control period during which such CAIR opt-in permit is issued.

(10) If the CAIR designated representative requests, and the department issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under subsection (j)(4) and such unit is repowered after its date of entry into the CAIR SO_2 trading program under subdivision (9), the repowered unit shall be treated as a CAIR SO_2 opt-in unit replacing the original CAIR SO_2 opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

Notwithstanding subdivisions (5) and (6), as of the date of start-up, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline SO_2 emission rate as the original CAIR SO_2 opt-in unit, and the original CAIR SO_2 opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR SO_2 unit.

(g) The following shall apply to the content of each CAIR opt-in permit:

(1) Each opt-in permit shall contain the following:

(A) All elements required for a complete CAIR permit application under section 7(c) of this rule.

(B) The certification in subsection (e)(2).

(C) The unit's baseline heat input under subsection (f)(5).

(D) The unit's baseline SO_2 emission rate under subsection (f)(6).

(E) A statement whether the unit is to be allocated CAIR SO_2 allowances under subsection (j)(4), subject to the conditions in subsections (f)(10) and (h)(8).

(F) A statement that the unit may withdraw from the CAIR SO_2 trading program only in accordance with subsection (h).

(G) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of subsection (i).

(2) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under this section and sections 8 and 9 of this rule, every allocation, transfer, or deduction of CAIR SO_2 allowances to or from the compliance account of the source that includes a CAIR SO_2 opt-in unit covered by the CAIR opt-in permit.

(h) The following requirements must be satisfied in order to withdraw an opt-in unit from the CAIR SO_2 trading program:

(1) Except as provided under subdivision (8), a CAIR SO_2 opt-in unit may withdraw from the CAIR SO_2 trading program, but only if the department issues a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit in accordance with subdivision (6).

(2) In order to withdraw a CAIR opt-in unit from the CAIR SO_2 trading program, the CAIR designated representative of the CAIR SO_2 opt-in unit shall submit to the department a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least four (4) years after December 31 of the year of entry into the CAIR SO_2 trading program under subsection (f)(9). The request must be submitted not later than ninety (90) days before the requested effective date of withdrawal.

(3) Before a CAIR SO_2 opt-in unit covered by a request under subdivision (1) may withdraw from the CAIR SO_2 trading program and the CAIR opt-in permit may be terminated under subdivision (7), the following conditions must be met:

(A) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO_2 opt-in unit must meet the requirement to hold CAIR SO_2 allowances under section 4(c) of this rule and cannot have any excess emissions.

(B) After the requirement for withdrawal under clause (A) is met, the U.S. EPA will deduct from the compliance account of the source that includes the CAIR SO_2 opt-in unit CAIR SO_2 allowances equal in amount to and allocated for the same or a prior control period as any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under subsection (j) for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO_2 units at the source, the U.S. EPA will close the compliance account, and the owners and operators of the CAIR SO_2 opt-in unit may submit a CAIR SO_2 allowance transfer for any remaining CAIR SO_2 allowances to another CAIR SO_2 allowance tracking system in accordance with section 9 of this rule.

(4) After the requirements for withdrawal under subdivisions (2) and (3) are met, including deduction of the full

amount of CAIR SO_2 allowances required, the department shall issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(5) If the requirements for withdrawal under subdivisions (2) and (3) are not met, the department shall issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit that the CAIR SO_2 opt-in unit's request to withdraw is denied. Such CAIR SO_2 opt-in unit shall continue to be a CAIR SO_2 opt-in unit.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the CAIR permit covering the CAIR SO_2 opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under subdivision (4). The unit shall continue to be a CAIR SO_2 opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO_2 trading program concerning any control periods for which the unit is a CAIR SO_2 opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(7) If the department denies the CAIR SO_2 opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with subdivisions (2) and (3).

(8) Notwithstanding subdivisions (1) through (7), a CAIR SO_2 opt-in unit shall not be eligible to withdraw from the CAIR SO_2 trading program if the CAIR designated representative of the CAIR SO_2 opt-in unit requests, and the department issues a CAIR SO_2 opt-in permit providing for, allocation to the CAIR SO_2 opt-in unit of CAIR SO_2 allowances under subsection (j)(4).

(9) Once a CAIR SO_2 opt-in unit withdraws from the CAIR SO_2 trading program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under subsection (e) for such CAIR SO_2 opt-in unit before the date that is four (4) years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit shall be treated as an initial application for a CAIR opt-in permit under subsection (f).

(i) When a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule, then the CAIR designated representative shall notify in writing the department and the U.S. EPA of such change in the CAIR SO_2 opt-in unit's regulatory status, within thirty (30) days of such change. If there is a change in the regulatory status, the department and the U.S. EPA will take the following actions concerning the CAIR SO_2 opt-in source:

(1) When the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule, the department shall revise the CAIR SO_2 opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under section 7(d) and (7)(e) of this rule as of the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account of the source that includes the CAIR SO_2 opt-in unit that becomes a CAIR SO_2 unit under section 1 of this rule, CAIR SO_2 allowances equal in amount to and allocated for the same or a prior control period as follows:

(A) Any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under subsection (j) for any control period after the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule.

(B) If the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule is not December 31, the CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under subsection (j) for the control period that includes the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(3) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO_2 unit that becomes a CAIR SO_2 unit under section 1 of this rule contains the CAIR SO_2 allowances necessary for completion of the deduction under subdivision (2).

(4) For every control period after the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule, the CAIR SO_2 opt-in unit shall be treated, solely for purposes of CAIR SO_2 allowance allocations under section 8(c) of this rule, as a unit that commences operation on the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule and shall be allocated CAIR SO_2 allowances under section 8(c) of this rule.

(5) Notwithstanding subdivision (4), if the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule is not January 1, the following amount of CAIR SO_2 allowances shall be allocated to the CAIR SO_2 opt-in unit, as a CAIR SO_2 unit, under section 8(c) of this rule for the control period that includes the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of this rule:

(A) the amount of CAIR SO_2 allowances otherwise allocated to the CAIR SO_2 opt-in unit, as a CAIR SO_2 unit, under section 8(c) of this rule for the control period multiplied by;

(B) the ratio of the number of days, in the control period, starting with the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under section 1 of

this rule, divided by the total number of days in the control period; and

(C) rounded to the nearest whole allowance as appropriate.

(j) The department shall allocate CAIR SO_2 allowances to CAIR SO_2 opt-in sources as follows:

(1) When the CAIR opt-in permit is issued under subsection (f)(7), the department shall allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the U.S. EPA the allocation for the control period in which a CAIR SO_2 opt-in unit enters the CAIR SO_2 trading program under subsection (f)(9), in accordance with subdivision (3) or (4).

(2) By not later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR SO_2 trading program under subsection (f)(9) and October 31 of each year thereafter, the department shall allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the U.S. EPA the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO_2 opt-in unit, in accordance with subdivision (3) or (4).

(3) For each control period for which a CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances, the department shall allocate in accordance with the following procedures:

(A) The heat input, in million British thermal units (mmBtu), used for calculating the CAIR SO_2 allowance allocation shall be the lesser of the following:

(i) The CAIR SO_2 opt-in unit's baseline heat input determined under subsection (f)(5).

(ii) The CAIR SO_2 opt-in unit's heat input, as determined in accordance with section 10 of this rule, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 trading program under subsection (f)(9).

(B) The SO_2 emission rate, in million British thermal units (mmBtu), used for calculating CAIR SO_2 allowance allocations shall be the lesser of the following:

(i) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate, in pounds per million British thermal units (lb/mmBtu), determined under subsection (f)(6) and multiplied by seventy percent (70%).

(ii) The most stringent state or federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(C) The department shall allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit in an amount equaling the heat input under clause (A), multiplied by the SO_2 emission rate under clause (B), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(4) Notwithstanding subdivision (3) and if the CAIR designated representative requests, and the department issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under this subdivision, subject to the conditions in subsections (f)(10) and (h), the department shall allocate to the CAIR SO_2 opt-in unit as follows:

(A) For each control period in 2010 through 2014 for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances as follows:

(i) The heat input, in million British thermal units (mmBtu), used for calculating CAIR SO_2 allowance allocations shall be determined as described in subdivision (3)(A).

(ii) The SO_2 emission rate, in pounds per million British thermal units (lb/mmBtu), used for calculating CAIR SO_2 allowance allocations shall be the lesser of:

(AA) the CAIR SO_2 opt-in unit's baseline SO_2 emissions rate, in pounds per million British thermal units (lb/mmBtu), determined under subsection (f)(6); or

(BB) the most stringent state or federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 trading program under subsection (f)(9).

(iii) The department shall allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit in an amount equaling the heat input under item (i), multiplied by the SO_2 emission rate under item (ii), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(B) For each control period in 2015 and thereafter for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances as follows:

(i) The heat input, in million British thermal units (mmBtu), used for calculating the CAIR SO_2 allowance allocations shall be determined as described in subdivision (3)(A).

(ii) The SO_2 emission rate, in pounds per million British thermal units (lb/mmBtu), used for calculating the CAIR SO_2 allowance allocation shall be the lesser of:

(AA) the CAIR SO_2 opt-in unit's baseline $SO_{2\ x}$ emissions rate, in pounds per million British thermal units (lb/mmBtu), determined under subsection (f)(6) multiplied by ten percent (10%); or

(BB) the most stringent state or federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(iii) The department shall allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit in an amount equaling the heat input item (i), multiplied by the SO_2 emission rate under clause (B)(ii), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(5) The U.S. EPA will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the department to the CAIR SO_2 opt-in unit under subdivision (1).

(6) By December 1 of the control period in which a CAIR opt-in unit enters the CAIR SO_2 trading program under subsection (f)(9) and December 1 of each year thereafter, the U.S. EPA will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the department to the CAIR SO_2 opt-in unit under subdivision (2).

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-2-11)*

Rule 3. Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program

326 IAC 24-3-1 Applicability

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

Sec. 1. (a) This rule establishes a NO_x ozone season emissions budget and NO_x trading program for fossil-fuel-fired generating units and large affected units as described in this rule. The following units shall be CAIR NO_x ozone season units, and any source that includes one (1) or more such units shall be a CAIR NO_x ozone season source, and shall be subject to the requirements of this rule, except as provided in subsection (b):

(1) Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts producing electricity for sale.

(2) Any large affected unit as defined in section 2 of this rule.

(3) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under subdivision (1), is not a CAIR NO_x ozone season unit begins to serve a generator with nameplate capacity of more than twenty-five (25) megawatts producing electricity for sale, the unit shall become a CAIR NO_x ozone season unit on the date on which it first serves such generator.

(b) Units that meet the requirements set forth in subdivision (1), (2), or (3) shall not be CAIR NO_x ozone season units.

(1) Any unit:

(A) qualifying as a cogeneration unit during the twelve (12) month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) not serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts supplying in any calendar year more than one-third (⅓) of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours, whichever is greater, to any utility power distribution system for sale.

If a unit qualifies as a cogeneration unit during the twelve (12) month period starting on the date the unit first produces electricity and meets the requirements of clause (A) or (B) for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x ozone season unit starting on the earlier of January 1 after the first calendar year during which the unit no longer meets the requirements of clause (B).

(2) Any unit commencing operation before January 1, 1985:

(A) qualifying as a solid waste incineration unit; and

(B) with an average annual fuel consumption of nonfossil fuel for 1985-1987 exceeding eighty percent (80%), on a British thermal units basis, and an average annual fuel consumption of nonfossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%), on a British thermal units basis shall.

(3) Any unit commencing operation on or after January 1, 1985:

(A) qualifying as a solid waste incineration unit; and

(B) with an average annual fuel consumption of nonfossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%), on a British thermal units basis, and an average annual fuel consumption of nonfossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%), on a British thermal units basis.

(4) If the unit qualifies as a solid waste incineration unit and meets the requirements of subdivision (2) or (3) for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NOx ozone season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(Air Pollution Control Board; 326 IAC 24-3-1)

326 IAC 24-3-2 Definitions

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

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

(1) "Account number" means the identification number given by the U.S. EPA to each CAIR NO_X ozone season allowance tracking system account.

(2) "Acid rain emissions limitation" means a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program.

(3) "Acid rain program" means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the U.S. EPA under Title IV of the Clean Air Act and 40 CFR Parts 72 through 78*.

(4) "Allocate" or "allocation" means, with regard to CAIR NO_X ozone season allowances issued under section 8 of this rule or 40 CFR 51.123(aa)(2)(iii), 40 CFR 51.123(bb)(2)(iii) or 40 CFR 51.123(bb)(2)(iv), or 40 CFR 51.123(dd)(3) or 40 CFR 51.123(dd)(4)*, the determination by the department or the U.S. EPA of the amount of such CAIR NO_X ozone season allowances to be initially credited to a CAIR NO_X ozone season unit or a new unit set-aside and, with regard to CAIR NO_X ozone season allowances issued under section 12(j) of this rule or 40 CFR 51.123(aa)(2)(iii)(A)*, the determination by the department of the amount of such CAIR NO_X ozone season allowances to be initially credited to a CAIR NO_X ozone season unit.

(5) "Allowance transfer deadline" means, for a control period, midnight of November 30, if it is a business day, or, if November 30 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR NO_X ozone season allowance transfer must be submitted for recordation in a CAIR NO_X source's compliance account in order to be used to meet the source's CAIR NO_X ozone season emissions limitation for such control period in accordance with sections 9(i) and 9(j) of this rule.

(6) "Alternate CAIR designated representative" means, for a CAIR NO_X ozone season source and each CAIR NO_X ozone season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with sections 6 and 12 of this rule, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_X ozone season annual trading program. If the CAIR NO_X ozone season source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X annual trading program. If the CAIR NO_X ozone season source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 ozone season trading program. If the CAIR NO_X ozone season source is also subject to the acid rain program, then this natural person shall be the same person as the alternate designated representative under the acid rain program. If the CAIR NO_X ozone season source is also subject to the mercury budget trading program, then this natural person shall be the same person as the alternate mercury designated representative under the mercury budget trading program.

(7) "Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under section 11 of this rule, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by section 11 of this rule.

(8) "Boiler" means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(9) "Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

(10) "CAIR authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with sections 6 and 12 of this rule, to transfer and otherwise dispose of CAIR NO_X ozone season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

(11) "CAIR designated representative" means, for a CAIR NO_X ozone season source and each CAIR NO_X ozone season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with sections 6 and 12 of this rule, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X ozone season trading program. If the CAIR NO_X ozone season source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X annual trading program. If the CAIR NO_X ozone season source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 trading program. If the CAIR NO_X ozone season source is also subject to the acid rain program, then this natural person shall be the same person as the designated representative under the acid rain program. If the CAIR NO_X ozone season source is also subject to the mercury budget trading program, then this natural person shall be the same person as the alternate mercury

designated representative under the mercury budget trading program.

(12) "CAIR NO_X annual trading program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the U.S. EPA in accordance with 326 IAC 24-1 and 40 CFR 51.123* or established by the U.S. EPA in accordance with 40 CFR 97, Subparts AA through II* and 40 CFR 52.35*, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

(13) "CAIR NO_X ozone season allowance" means a limited authorization issued by the department or the U.S. EPA under section 8 of this rule, section 12(j) of this rule, or 40 CFR 51.123(aa)(2)(iii), 40 CFR 51.123(bb)(2)(ii) or 40 CFR 51.123(bb)(2)(iv), or 40 CFR 51.123(dd)(3) or 40 CFR 51.123(dd)(4)* to emit one (1) ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X ozone season program or a limited authorization issued by the department for a control period during 2003 through 2009 under the NOx budget trading program in accordance with 40 CFR 51.121(p)* or 326 IAC 10-4 to emit one (1) ton of nitrogen oxides during a control period, provided that the provision in 40 CFR 51.121(b)(2)(i)(E)* shall not be used in applying this definition. An authorization to emit nitrogen oxides that is not issued under provisions of a state implementation plan that meets requirements of 40 CFR 121(p)* or 40 CFR 51.123(aa)(1) or 40 CFR 51.123(aa)(2), and 40 CFR 51.123(bb)(1), 40 CFR 51.123(bb)(2) or 40 CFR 51.123(dd)* shall not be a CAIR NO_X ozone season allowance.

(14) "CAIR NO_X ozone season allowance deduction" or "deduct CAIR NO_X ozone season allowances" means the permanent withdrawal of CAIR NO_X ozone season allowances by the U.S. EPA from a compliance account in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X ozone season units at a CAIR NO_X ozone season source for a control period, determined in accordance with section 11 of this rule, or to account for excess emissions.

(15) "CAIR NO_X ozone season allowances held" or "hold CAIR NO_X ozone season allowances" means the CAIR NO_X ozone season allowances recorded by the U.S. EPA, or submitted to the U.S. EPA for recordation, in accordance with sections 9, 10, and 12 of this rule, in a CAIR NO_X ozone season allowance tracking system account.

(16) "CAIR NO_X ozone season allowance tracking system" means the system by which the U.S. EPA records allocations, deductions, and transfers of CAIR NO_X ozone season allowances under the CAIR NO_X ozone season trading program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

(17) "CAIR NO_X ozone season allowance tracking system account" means an account in the CAIR NO_X ozone season allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X ozone season allowances.

(18) "CAIR NO_X ozone season emissions limitation" means, for a CAIR NO_X ozone season source, the tonnage equivalent of the CAIR NO_X ozone season allowances available for deduction for the source under section 9(i) and 9(j)(1) of this rule for a control period.

(19) "CAIR NO_X ozone season source" means a source that includes one (1) or more CAIR NO_X ozone season units.

(20) "CAIR NO_X ozone season trading program" means a multistate nitrogen oxides air pollution control and emission reduction program established in accordance with this rule and 40 CFR 51.123*, as a means of mitigating interstate transport of ozone and nitrogen oxides.

(21) "CAIR NO_X ozone season unit" means a unit that is subject to the CAIR NO_X ozone season trading program under section 1 of this rule and, and except for the purposes of sections 3 and 8 of this rule, a CAIR NO_X ozone season opt-in unit under section 12 of this rule.

(22) "CAIR NO_X source" means a source that includes one (1) or more CAIR NO_X units.

(23) "CAIR NO_X unit" means a unit that is subject to the CAIR NO_X annual trading program under 326 IAC 24-1-1 and a CAIR NO_X opt-in unit under 326 IAC 24-1-12.

(24) "CAIR permit" means the legally binding and federally enforceable written document, or portion of such document, issued by the department under section 7 of this rule, including any permit revisions, specifying the CAIR NO_X ozone season trading program requirements applicable to a CAIR NO_X ozone season source, to each CAIR NO_X ozone season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

(25) "CAIR SO_2 source" means a source that includes one (1) or more CAIR SO_2 units.

(26) "CAIR SO_2 trading program" means a multistate sulfur dioxide air pollution control and emission reduction program established in accordance with this rule and 40 CFR 51.124*, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

(27) "CAIR SO_2 unit" means a unit that is subject to the CAIR SO_2 trading program under 326 IAC 24-2-1 and a CAIR SO_2 opt-in unit under 326 IAC 24-2-11.

(28) "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

(29) "Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal.

(30) "Coal-fired" means:

(A) except for purposes of section 8 of this rule, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(B) for purposes of section 8 of this rule, combusting any

amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

(31) "Cogeneration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(A) having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(B) producing electricity during the twelve (12) month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity.

(i) For a topping-cycle cogeneration unit:

(AA) useful thermal energy not less than five percent (5%) of total energy output; and

(BB) useful power that, when added to one-half (½) of useful thermal energy produced, is not less than forty-two and one-half percent (42.5%) of total energy input, if useful thermal energy produced is fifteen percent (15%) or more of total energy output, or not less than forty-five percent (45%) of total energy input, if useful thermal energy produced is less than fifteen percent (15%) of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than forty-five percent (45%) of total energy input.

(32) "Combustion turbine" means:

(A) an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(B) if the enclosed device under clause (A) is combined cycle, any associated heat recovery steam generator and steam turbine.

(33) "Commence commercial operation" means, with regard to a unit serving a generator:

(A) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in section 3 of this rule.

(i) For a unit that is a CAIR NO_X ozone season unit under section 1 of this rule on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a CAIR NO_X ozone season unit under section 1 of this rule on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered; the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this clause or clause (B) or (C), as appropriate.

(B) Notwithstanding clause (A) and except as provided in section 3 of this rule, for a unit that is not a CAIR NO_X ozone season unit under section 1 of this rule on the later of November 15, 1990, or the date the unit commences commercial operation as defined in clause (A) and is not a unit under clause (C), the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X ozone season unit under section 1 of this rule.

(i) For a unit with a date for commencement of commercial operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered, the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in clause (A), this clause, or clause (C) as appropriate.

(C) Notwithstanding clause (A) and except as provided in section 12(f)(10) or 12(i)(4) and 12(i)(5) of this rule, for a CAIR NO_X ozone season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X ozone season emissions rate and the heat input of the unit under section 12(f)(2) of this rule.

(i) For a unit with a date for commencement of commercial operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered, the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in clause (A) or (B) or this clause as appropriate.

(D) Notwithstanding clauses (A) through (C), for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

(34) "Commence operation" means:

(A) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in section 3 of this rule.

(i) For a unit that undergoes a physical change, other than replacement of the unit by a unit at the same source, after the date the unit commences operation as defined in this clause, such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is replaced by a unit at the same source, for example, repowered, after the date the unit commences operation as defined in this clause, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in this clause or clause (B) or (C), as appropriate.

(B) Notwithstanding clause (A), and except as provided in section 3 of this rule, for a unit that is not a CAIR NO_X ozone season unit under section 1 of this rule, but not on the later of November 15, 1990, or the date the unit commences operation as defined in clause (A) and is not a unit under clause (C), the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_X ozone season unit under section 1 of this rule.

(i) For a unit with a date for commencement of operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in clause (A), this clause, or clause (C), as appropriate.

(C) Notwithstanding clause (A), and except as provided in section 12(f)(10) or 12(i)(4) and 12(i)(5) of this rule, for a CAIR NO_X ozone season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X ozone season emissions rate and the heat input of the unit under section 12(f)(2) of this rule.

(i) For a unit with a date for commencement of operation as defined in this clause and that subsequently undergoes a physical change, other than replacement of the unit by a unit at the same source, such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in this clause and that is subsequently replaced by a unit at the same source, for example, repowered, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in clause (A) or (B) or this clause, as appropriate.

(35) "Common stack" means a single flue through which emissions from two (2) or more units are exhausted.

(36) "Compliance account" means a CAIR NO_X ozone season allowance tracking system account, established by the U.S. EPA for a CAIR NO_X ozone season source under section 9 or 12 of this rule, in which any CAIR NO_X ozone season allowance allocations for the CAIR NO_X ozone season units at the source are initially recorded and in which are held any CAIR NO_X ozone season allowances available for use for a control period in order to meet the source's CAIR NO_X ozone season emissions limitation in accordance with section 9(i) and 9(j) of this rule.

(37) "Continuous emission monitoring system" or "CEMS" means the equipment required under section 11 of this rule to sample, analyze, measure, and provide, by means of readings recorded at least once every fifteen (15) minutes, using an automated data acquisition and handling system (DAHS), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration, as applicable, in a manner consistent with 40 CFR 75*. The following systems are the principal types of continuous emission monitoring systems required under section 11 of this rule:

(A) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh).

(B) A nitrogen oxides concentration monitoring system, consisting of a NO_X ozone season pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X ozone season emissions, in parts per million (ppm).

(C) A nitrogen oxides emission rate, or NO_X ozone season-diluent, monitoring system, consisting of a NO_X ozone season pollutant concentration monitor, a diluent gas, CO_2 or O_2, monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X ozone season concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X ozone season emission rate, in pounds per million British thermal units (lb/mmBtu).

(D) A moisture monitoring system, as defined in 40 CFR 75.11(b)(2)* and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O.

(E) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor, or an oxygen monitor plus suitable mathematical equations from

which the CO_2 concentration is derived, and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2.

(F) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

(38) "Control period" means the period beginning May 1 of a calendar year and ending on September 30 of the same year, inclusive.

(39) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the U.S. EPA by the CAIR designated representative and as determined by the U.S. EPA in accordance with section 11 of this rule.

(40) "Energy efficiency or renewable energy projects" means any of the following implemented in Indiana:

(A) End-use energy efficiency projects, including demand-side management programs.

(B) Highly efficient electricity generation for the predominant use of a single end user, such as combined cycle, combined heat and power, microturbines, and fuel cell systems. In order to be considered as highly efficient electricity generation under this clause, combined cycle, combined heat and power, microturbines, and fuel cell generating systems must meet or exceed the following thresholds:

(i) For combined heat and power projects generating both electricity and thermal energy for space, water, or industrial process heat, rated energy efficiency of sixty percent (60%).

(ii) For microturbine projects rated at or below five hundred (500) kilowatts generating capacity, rated energy efficiency of forty percent (40%).

(iii) For combined cycle projects rated at greater than five hundred (500) kilowatts, rated energy efficiency of fifty percent (50%).

(iv) For fuel cell systems, rated energy efficiency of forty percent (40%), whether or not the fuel cell system is part of a combined heat and power energy system.

(C) Zero-emission renewable energy projects, including wind, photovoltaic, solar, and hydropower projects. Eligible hydropower projects are restricted to systems employing a head of ten (10) feet or less or systems employing a head greater than ten (10) feet that make use of a dam that existed before the effective date of this rule.

(D) Energy efficiency projects generating electricity through the capture of methane gas from municipal solid waste landfills, water treatment plants, sewage treatment plants, or anaerobic digestion systems operating on animal or plant wastes.

(E) The installation of highly efficient electricity generation equipment for the sale of power where such equipment replaces or displaces retired electrical generating units. In order to be considered as highly efficient under this clause, generation equipment must meet or exceed the following energy efficiency thresholds:

(i) For coal-fired electrical generation units, rated energy efficiency of forty-two percent (42%).

(ii) For natural gas-fired electrical generating units, rated energy efficiency of fifty percent (50%).

(F) Improvements to existing fossil fuel-fired electrical generation units that increase the efficiency of the unit and decrease the heat rate used to generate electricity, including gas reburning projects that reduce NOx emissions.

(G) The installation of integrated gasification combined cycle equipment producing electricity for sale.

Energy efficiency or renewable energy projects do not include nuclear power projects. This definition is solely for the purposes of implementing this rule and does not apply in other contexts.

(41) "Excess emissions" means any ton of nitrogen oxides emitted by the CAIR NO_X ozone season units at a CAIR NO_X ozone season source during a control period that exceeds the CAIR NO_X ozone season emissions limitation for the source.

(42) "FESOP" means a federally enforceable state operating permit issued under 326 IAC 2-8.

(43) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(44) "Fossil-fuel-fired" means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

(45) "Fuel oil" means any petroleum-based fuel, including diesel fuel or petroleum derivatives such as oil tar, and any recycled or blended petroleum products or petroleum byproducts used as a fuel whether in a liquid, solid, or gaseous state.

(46) "General account" means a CAIR NO_X ozone season allowance tracking system account, established under section 9 of this rule, that is not a compliance account.

(47) "Generator" means a device that produces electricity.

(48) "Gross electrical output" means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process. This process may include, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls.

(49) "Heat input" means, with regard to a specified period of time, the product, in million British thermal units per unit of time (MMBtu/time) of the gross calorific value of the fuel, in British thermal units per pound (Btu/lb), divided by one million (1,000,000) British thermal units per million British thermal units (Btu/mmBtu) and multiplied by the fuel feed rate into a combustion device, in pounds of fuel per unit of time (lb of fuel/time), as measured, recorded, and reported to the U.S. EPA by the CAIR designated representative and determined by the

U.S. EPA in accordance with section 11 of this rule and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(50) "Heat input rate" means the amount of heat input, in million British thermal units (mmBtu), divided by unit operating time, in hours, or, with regard to a specific fuel, the amount of heat input attributed to the fuel, in million British thermal units (mmBtu), divided by the unit operating time, in hours, during which the unit combusts the fuel.

(51) "Large affected unit" means the following:

(A) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(B) For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(C) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour that:

(i) at no time serves a generator producing electricity for sale; or

(ii) at any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of twenty-five (25) megawatts or less and has the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit.

Large affected unit does not include a unit subject to 326 IAC 10-3.

(52) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(A) for the life of the unit;

(B) for a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(C) for a period no less than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(53) "Maximum design heat input" means, starting from the initial installation of a unit, the maximum amount of fuel per hour, in British thermal units per hour (Btu/hr), that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour, in British thermal units per hour (Btu/hr), that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

(54) "Mercury budget trading program" means a multistate mercury air pollution control and emission reduction program approved and administered by the U.S. EPA in accordance with 40 CFR Part 60, Subpart HHHH* and 40 CFR 60.24(h)(6)*, or established by the U.S. EPA, as a means of reducing national mercury emissions.

(55) "Monitoring system" means any monitoring system that meets the requirements of section 11 of this rule, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR 75*.

(56) "Most stringent state or federal NO_X ozone season emissions limitation" means, with regard to a unit, the lowest NO_X emissions limitation, in terms of pounds per million British thermal units (lb/mmBtu), that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(57) "Nameplate capacity" means, starting from the initial installation of a generator, the maximum electrical generating output, in megawatt electrical (MWe), that the generator is capable of producing on a steady state basis and during continuous operation, when not restricted by seasonal or other deratings, as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output, in megawatt electrical (MWe), that the generator is capable of producing on a steady state basis and during continuous operation, when not restricted by seasonal or other deratings, such increased maximum amount is specified by the person conducting the physical change.

(58) "Operator" means any person who operates, controls, or supervises a CAIR NO_X ozone season unit or a CAIR NO_X ozone season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(59) "Owner" means any of the following persons:

(A) with regard to a CAIR NO_X ozone season source or a CAIR NO_X ozone season unit at a source, respectively:

(i) any holder of any portion of the legal or equitable title in a CAIR NO_X ozone season unit at the source or the CAIR NO_X ozone season unit;

(ii) any holder of a leasehold interest in a CAIR NO_X ozone season unit at the source or the CAIR NO_X ozone season unit; or

(iii) any purchaser of power from a CAIR NO_X ozone

season unit at the source or the CAIR NO_X ozone season unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, on the revenues or income from such CAIR NO_X ozone season unit; or

(B) with regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X ozone season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_X ozone season allowances.

(60) "Potential electrical output capacity" means thirty-three percent (33%) of a unit's maximum design heat input, divided by three thousand four hundred thirteen (3,413) Btu/kilowatt hour, divided by one thousand (1,000) kilowatt hour/megawatt hour, and multiplied by eight thousand seven hundred sixty (8,760) hours/year.

(61) "Rated energy efficiency" means the percentage of gross energy input that is recovered as useable net energy output in the form of electricity or thermal energy, or both, that is used for heating, cooling, industrial processes, or other beneficial uses as follows:

(A) For electric generators, rated energy efficiency is calculated as one (1) net kilowatt hour (three thousand four hundred twelve (3,412) British thermal units) of electricity divided by the unit's design heat rate using the higher heating value of the fuel.

(B) For combined heat and power projects, rated energy efficiency is calculated using the following formula:

Eff% = (NEO + UTO)/GEI

Where: Eff% = Rated energy efficiency.

NEO = Net electrical output of the system converted to British thermal units per unit of time.

UTO = Utilized thermal output or the energy value in British thermal units of thermal energy from the system that is used for heating, cooling, industrial processes, or other beneficial uses, per unit of time.

GEI = Gross energy input, based upon the higher heating value of fuel, per unit of time.

(62) "Receive" or "receipt of" means, when referring to the department or U.S. EPA, to come into possession of a document, information, or correspondence, whether sent in hard copy or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the department or U.S. EPA in the regular course of business.

(63) "Recordation", "record", or "recorded" means, with regard to CAIR NO_X ozone season allowances, the movement of CAIR NO_X ozone season allowances by the U.S. EPA into or between CAIR NO_X ozone season allowance tracking system accounts, for purposes of allocation, transfer, or deduction.

(64) "Reference method "means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22*.

(65) "Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(A) Atmospheric or pressurized fluidized bed combustion.

(B) Integrated gasification combined cycle.

(C) Magnetohydrodynamics.

(D) Direct and indirect coal-fired turbines.

(E) Integrated gasification fuel cells.

(F) As determined by the U.S. EPA in consultation with the Secretary of Energy, a derivative of one or more of the technologies under clauses (A) through (E) and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

(66) "Sequential use of energy" means:

(A) for a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(B) for a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

(67) "Serial number" means, for a CAIR NO_X ozone season allowance, the unique identification number assigned to each CAIR NO_X ozone season allowance by the U.S. EPA.

(68) "Solid waste incineration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a solid waste incineration units as defined in the Clean Air Act, Section 129(g)(1).

(69) "Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of Section 502(c) of the Clean Air Act, a source, including a source with multiple units, shall be considered a single facility.

(70) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable rule:

(A) in person;

(B) by United States Postal Service; or

(C) by other means of dispatch or transmission and

delivery.
Compliance with any submission or service deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.
(71) "Title V operating permit" or "Part 70 operating permit" means a permit issued under 326 IAC 2-7.
(72) "Title V operating permit regulations" or "Part 70 operating permit regulations" means the rules under 326 IAC 2-7.
(73) "Ton" means two thousand (2,000) pounds. For the purpose of determining compliance with the CAIR NO_X ozone season emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions, or the mass equivalent of the recorded hourly emission rates, in accordance with section 11 of this rule, but with any remaining fraction of a ton equal to or greater than fifty-hundredths (0.50) tons deemed to equal one (1) ton and any remaining fraction of a ton less than fifty-hundredths (0.50) tons deemed to equal zero (0) tons.
(74) "Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.
(75) "Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.
(76) "Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.
(77) "Unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.
(78) "Unit operating day" means a calendar day in which a unit combusts any fuel.
(79) "Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.
(80) "Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process, which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls.
(81) "Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:
(A) made available to an industrial or commercial process, not a power production process, excluding any heat contained in condensate return or makeup water;
(B) used in a heating application (for example, space heating or domestic hot water heating); or
(C) used in a space cooling application (that is, thermal energy used by an absorption chiller).
(82) "Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-3-2)*

326 IAC 24-3-3 Retired unit exemption
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 3. (a) This section applies to any CAIR NO_x ozone season unit, other than a NO_x ozone season opt-in source, that is permanently retired.
(1) Any CAIR NO_X ozone season unit that is permanently retired and is not a CAIR NO_X ozone season opt-in unit shall be exempt from the CAIR NO_X ozone season trading program, except for the provisions of this section, sections 1, 2, 4(c)(4) through 4(c)(7), 5, and 8 through 10 of this rule.
(2) The exemption under this section shall become effective the day on which the CAIR NO_X ozone season unit is permanently retired. Within thirty (30) days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the department and shall submit a copy of the statement to the U.S. EPA. The statement shall state, in a format prescribed by the department, that the unit was permanently retired on a specific date and shall comply with the requirements of subsection (b).
(3) After receipt of the statement under subdivision (2), the department shall amend any permit under section 7 of this rule covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision (1) and subsection (b).

(b) A unit exempt under this section shall comply with the following provisions:
(1) The unit shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.
(2) The department shall allocate CAIR NO_X ozone season allowances under section 8 of this rule to the unit.
(3) For a period of five (5) years from the date the records are created, the owners and operators of the unit shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The five (5) year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the department or U.S. EPA. The owners and operators bear the burden of proof that the unit is permanently retired.
(4) The owners and operators and, to the extent applicable, the CAIR designated representative of the unit shall

comply with the requirements of the CAIR NO_X ozone season trading program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) If the unit is located at a source that is required, or but for this exemption would be required, to have an operating permit under 326 IAC 2-7 or FESOP permit under 326 IAC 2-8, the unit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under section 7(c) of this rule for the unit not less than eighteen (18) months, or such lesser time provided by the department, before the later of January 1, 2009, or the date on which the unit resumes operation.

(6) A unit exempt under this section shall lose its exemption on the earlier of the following dates:

(A) The date on which the CAIR designated representative submits a CAIR permit application for the unit under subdivision (5).

(B) The date on which the CAIR designated representative is required under subdivision (5) to submit a CAIR permit application for the unit.

(C) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and record keeping requirements under section 11 of this rule, a unit that loses its exemption under this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

(Air Pollution Control Board; 326 IAC 24-3-3)

326 IAC 24-3-4 Standard requirements

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

Sec. 4. (a) The owners and operators, and CAIR designated representative of each CAIR NOx ozone season source shall comply with the following permit requirements:

(1) The CAIR designated representative of each CAIR NO_X ozone season source required to have a federally enforceable permit and each CAIR NO_X ozone season unit required to have a federally enforceable permit at the source shall submit the following to the department:

(A) A complete CAIR permit application under section 7(c) of this rule in accordance with the deadlines specified in section 7(b)(1) of this rule.

(B) Any supplemental information that the department determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_X ozone season source required to have a federally enforceable permit and each CAIR NO_X ozone season unit required to have a federally enforceable permit at the source shall have a CAIR permit issued by the department under section 7 of this rule for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in section 12 of this rule, the owners and operators of a CAIR NO_X ozone season source that is not otherwise required to have a federally enforceable permit and each CAIR NO_X ozone season unit that is not otherwise required to have a federally enforceable permit are not required to submit a CAIR permit application, and to have a CAIR permit, under section 7 of this rule for such CAIR NO_X ozone season source and such CAIR NO_X ozone season unit.

(b) The owners and operators, and the CAIR designated representative, of each CAIR NOx ozone season source and CAIR NOx ozone season unit at the source shall comply with the following monitoring, reporting, and record keeping requirements:

(1) The owners and operators, and the CAIR designated representative, of each CAIR NO_X ozone season source and each CAIR NO_X ozone season unit at the source shall comply with the monitoring, reporting, and record keeping requirements of section 11 of this rule.

(2) The emissions measurements recorded and reported in accordance with section 11 of this rule shall be used to determine compliance by each CAIR NO_X ozone season source with the CAIR NO_X ozone season emissions limitation under subsection (c).

(c) The owners and operators, and the CAIR designated representative, of each CAIR NOx ozone season source and CAIR NOx ozone season unit at the source shall comply with the following nitrogen oxides emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X ozone season source and each CAIR NO_X ozone season unit at the source shall hold, in the source's compliance account, CAIR NO_X ozone season allowances available for compliance deductions for the control period under section 9(i) of this rule in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X ozone season units at the source, as determined in accordance with section 11 of this rule.

(2) A CAIR NO_X ozone season unit shall be subject to the requirements under subdivision (1) for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under section 11(c)(1), 11(c)(2), 11(c)(3), or 11(c)(7) of this rule and for each control period thereafter.

(3) A CAIR NO_X ozone season allowance shall not be deducted, for compliance with the requirements under subdivision (1), for a control period in a calendar year before the year for which the CAIR NO_X ozone season allowance was allocated.

(4) CAIR NO_X ozone season allowances shall be held in, deducted from, or transferred into or among CAIR NO_X ozone season allowance tracking system accounts in

accordance with section 8 of this rule.

(5) A CAIR NO_X ozone season allowance is a limited authorization to emit one (1) ton of nitrogen oxides in accordance with the CAIR NO_X ozone season trading program. No provision of the CAIR NO_X ozone season trading program, the CAIR permit application, the CAIR permit, or an exemption under section 3 of this rule and no provision of law shall be construed to limit the authority of the department or the U.S. EPA to terminate or limit such authorization.

(6) A CAIR NO_X ozone season allowance does not constitute a property right.

(7) Upon recordation by the U.S. EPA under section 9, 10, or 12 of this rule, every allocation, transfer, or deduction of a CAIR NO_X ozone season allowance to or from a CAIR NO_X ozone season source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) If a CAIR NO_X ozone season source emits nitrogen oxides during any control period in excess of the CAIR NO_X ozone season emissions limitation, then:

(1) the owners and operators of the source and each CAIR NO_X ozone season unit at the source shall surrender the CAIR NO_X ozone season allowances required for deduction under section 9(j)(4) of this rule and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable state law; and

(2) each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable state law.

(e) Owners and operators of each CAIR NOx ozone season source and each CAIR NOx ozone season unit at the source shall comply with the following record keeping and reporting requirements:

(1) Unless otherwise provided, the owners and operators of the CAIR NO_X ozone season source and each CAIR NO_X ozone season unit at the source shall keep on site at the source each of the following documents for a period of five (5) years from the date the document is created. This period may be extended for cause, at any time before the end of five (5) years, in writing by the department or U.S. EPA.

(A) The certificate of representation under section 6(h) of this rule for the CAIR designated representative for the source and each CAIR NO_X ozone season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such five (5) year period until such documents are superseded because of the submission of a new certificate of representation under section 6(h) of this rule changing the CAIR designated representative.

(B) All emissions monitoring information, in accordance with section 11 of this rule, provided that to the extent that section 11 of this rule provides for a three (3) year period for record keeping, the three (3) year period shall apply.

(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X ozone season trading program.

(D) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X ozone season trading program or to demonstrate compliance with the requirements of the CAIR NO_X ozone season trading program.

(2) The CAIR designated representative of a CAIR NO_X ozone season source and each CAIR NO_X ozone season unit at the source shall submit the reports required under the CAIR NO_X ozone season trading program, including those under section 11 of this rule.

(f) The owners and operators of each CAIR NOx source and each CAIR NOx unit shall be liable as follows:

(1) Each CAIR NO_X ozone season source and each CAIR NO_X ozone season unit shall meet the requirements of the CAIR NO_X ozone season trading program.

(2) Any provision of the CAIR NO_X ozone season trading program that applies to a CAIR NO_X ozone season source or the CAIR designated representative of a CAIR NO_X ozone season source shall also apply to the owners and operators of such source and of the CAIR NO_X ozone season units at the source.

(3) Any provision of the CAIR NO_X ozone season trading program that applies to a CAIR NO_X ozone season unit or the CAIR designated representative of a CAIR NO_X ozone season unit shall also apply to the owners and operators of such unit.

(g) No provision of the CAIR NO_X ozone season trading program, a CAIR permit application, a CAIR permit, or an exemption under section 3 of this rule shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X ozone season source or CAIR NO_X ozone season unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, or the Clean Air Act. *(Air Pollution Control Board; 326 IAC 24-3-4)*

326 IAC 24-3-5 Computation of time

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) Unless otherwise stated, any time period scheduled, under the CAIR NO_X ozone season trading program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled,

under the CAIR NO_X ozone season trading program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_X ozone season trading program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day. *(Air Pollution Control Board; 326 IAC 24-3-5)*

326 IAC 24-3-6 CAIR designated representative for CAIR NOx ozone season sources

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) Except as provided under subsection (f), each CAIR NO_X ozone season source, including all CAIR NO_X ozone season units at the source, shall have one (1) and only one (1) CAIR designated representative, with regard to all matters under the CAIR NO_X ozone season trading program concerning the source or any CAIR NO_X ozone season unit at the source.

(b) The CAIR designated representative of the CAIR NO_X ozone season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X ozone season units at the source and shall act in accordance with the certification statement in subsection (h)(4).

(c) Upon receipt by the U.S. EPA of a complete certificate of representation under subsection (h), the CAIR designated representative of the source shall represent and, by its representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X ozone season source represented and each CAIR NO_X ozone season unit at the source in all matters pertaining to the CAIR NO_X ozone season trading program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the department, the U.S. EPA, or a court regarding the source or unit.

(d) No CAIR permit shall be issued, no emissions data reports shall be accepted, and no CAIR NO_X ozone season allowance tracking system account shall be established for a CAIR NO_X ozone season unit at a source, until the U.S. EPA has received a complete certificate of representation under subsection (h) for a CAIR designated representative of the source and the CAIR NO_X ozone season units at the source.

(e) The following shall apply to a submissions made under the CAIR NOx ozone season trading program:

(1) Each submission under the CAIR NO_X ozone season trading program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_X ozone season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.".

(2) The department and U.S. EPA will accept or act on a submission made on behalf of owner or operators of a CAIR NO_X ozone season source or a CAIR NO_X ozone season unit only if the submission has been made, signed, and certified in accordance with subdivision (1).

(f) The following shall apply where the owners or operators of a CAIR NOx source choose to designate an alternate CAIR designated representative:

(1) A certificate of representation under subsection (h) may designate one (1) and only one (1) alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(2) Upon receipt by the U.S. EPA of a complete certificate of representation under subsection (h), any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(3) Except in section 2 of this rule, subsections (a) and (d), this subsection, subsections (g) and (h), and sections 9(a) through 9(c) and 12 (d) of this rule, whenever the term CAIR designated representative is used in this rule, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

(g) The following shall apply when changing the CAIR designated representative, the alternate CAIR designated representative, or there are changes in the owners or operators:

(1) The CAIR designated representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete certificate of representation under subsection

(h). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the U.S. EPA receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_X ozone season source and the CAIR NO_X ozone season units at the source.

(2) The alternate CAIR designated representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete certificate of representation under subsection (h). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the U.S. EPA receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_X ozone season source and the CAIR NO_X ozone season units at the source.

(3) Changes in the owner and operators shall be made as follows:

(A) In the event a new owner or operator of a CAIR NO_X ozone season source or a CAIR NO_X ozone season unit is not included in the list of owners and operators in the certificate of representation under subsection (h), such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the department, the U.S. EPA, or a court, as if the new owner or operator were included in such list.

(B) Within thirty (30) days following any change in the owners and operators of a CAIR NO_X ozone season source or a CAIR NO_X ozone season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under subsection (h) amending the list of owners and operators to include the change.

(h) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the U.S. EPA:

(1) Identification of the CAIR NO_X ozone season source, and each CAIR NO_X ozone season unit at the source, for which the certificate of representation is submitted.

(2) The name, address, e-mail address, if any, telephone number, and facsimile transmission number, if any, of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_X ozone season source and of each CAIR NO_X ozone season unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative: "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_X ozone season unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X ozone season trading program on behalf of the owners and operators of the source and of each CAIR NO_X ozone season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions. I certify that the owners and operators of the source and of each CAIR NO_X ozone season unit at the source shall be bound by any order issued to me by the U.S. EPA, the department, or a court regarding the source or unit. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_X ozone season unit, or where a utility or industrial customer purchases power from a CAIR NO_X ozone season unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X ozone season unit at the source; and CAIR NO_X ozone season allowances and proceeds of transactions involving CAIR NO_X ozone season allowances shall be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_X ozone season allowances by contract, CAIR NO_X ozone season allowances and proceeds of transactions involving CAIR NO_X ozone season allowances shall be deemed to be held or distributed in accordance with the contract.".

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(i) The following shall apply to objections concerning CAIR designated representatives:

(1) Once a complete certificate of representation under subsection (h) has been submitted and received, the department and the U.S. EPA will rely on the certificate of representation unless and until a superseding complete

certificate of representation under subsection (h) is received by the U.S. EPA.

(2) Except as provided in subsection (g)(1) and (g)(2), no objection or other communication submitted to the department or the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the department or the U.S. EPA under the CAIR NO_X ozone season trading program.

(3) Neither the department nor the U.S. EPA will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X ozone season allowance transfers.

(Air Pollution Control Board; 326 IAC 24-3-6)

326 IAC 24-3-7 Permit requirements

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

Sec. 7. (a) For each CAIR NO_X ozone season source required to have a federally enforceable permit, the permit shall include a CAIR permit administered by the department as follows:

(1) For CAIR NOx sources required to have a Part 70 operating permit under 326 IAC 2-7, the CAIR portion of the Part 70 permit shall be administered in accordance with 326 IAC 2-7, except as provided otherwise by this section or section 12 of this rule.

(2) For CAIR NOx sources required to have a FESOP permit under 326 IAC 2-8, the CAIR portion of the FESOP permit shall be administered in accordance with 326 IAC 2-8, except as provided otherwise by this section or section 12 of this rule.

(3) Each CAIR permit, including a draft or proposed CAIR permit, if applicable, shall contain, with regard to the CAIR NO_X ozone season source and the CAIR NO_X ozone season units at the source covered by the CAIR permit, all applicable CAIR NO_X ozone season trading program, CAIR NO_X annual trading program, and CAIR SO_2 trading program requirements and shall be a complete and separable portion of the Part 70 operating permit or FESOP permit.

(b) Submission of CAIR permit applications is as follows:

(1) The CAIR designated representative of any CAIR NO_X ozone season source required to have a Part 70 operating permit or FESOP permit shall submit to the department a complete CAIR permit application under subsection (c) for the source covering each CAIR NO_X ozone season unit at the source at least eighteen (18) months before the later of January 1, 2009, or the date on which the CAIR NO_X ozone season unit commences operation.

(2) For a CAIR NO_X ozone season source required to have a Part 70 operating permit or FESOP permit, the CAIR designated representative shall submit a complete CAIR permit application under subsection (c) for the source covering each CAIR NO_X ozone season unit at the source to renew the CAIR permit in accordance with 326 IAC 2-7-4(a)(1)(D) or 326 IAC 2-8-3(h), as applicable.

(c) In addition to the requirements of 326 IAC 2-7-4(c) or 326 IAC 2-8-3(c), a complete CAIR permit application shall include the following elements concerning the CAIR NO_X ozone season source for which the application is submitted:

(1) Identification of the CAIR NO_X ozone season source.

(2) Identification of each CAIR NO_X ozone season unit at the CAIR NO_X ozone season source.

(3) The standard requirements under section 4 of this rule.

(d) In addition to the requirements under 326 IAC 2-7 or 326 IAC 2-8, each CAIR permit shall contain, in a format prescribed by the department, all elements required for a complete CAIR permit application under subsection (c).

(e) Each CAIR permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under sections 9, 10, and 12 of this rule, every allocation, transfer, or deduction of a CAIR NO_X ozone season allowance to or from the compliance account of the CAIR NO_X ozone season source covered by the permit.

(f) The initial CAIR permit covering a CAIR unit for which a complete CAIR permit application is timely submitted under subsection (b) shall become effective upon issuance.

(g) The term of the CAIR permit shall be set by the department, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_X ozone season source's Part 70 operating permit or FESOP.

(h) Except as provided in subsection (e), the department shall revise the CAIR permit, as necessary, in accordance with the following:

(1) The permit modification and revision provisions under 326 IAC 2-7, for a CAIR source with a Part 70 operating permit.

(2) The permit modification and revision provisions under 326 IAC 2-8, for a CAIR source with a FESOP.

(Air Pollution Control Board; 326 IAC 24-3-7)

326 IAC 24-3-8 CAIR NOx allowance allocations

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

Sec. 8. (a) The NOx ozone season trading program budget allocated by the department under subsections (d) through (g) for each control period shall equal the total number of

tons of NOx emissions apportioned to the CAIR NOx ozone season units under section 1 of this rule for the ozone control period, as determined by the procedures in this section. The total number of tons of NOx emissions that are available for each control period for allocations of CAIR NOx ozone season allowances under this rule are fifty-five thousand six hundred thirty-one (55,631) tons for control periods in 2009 through 2014 and forty-eight thousand nine hundred fifty-two (48,952) for control periods in 2015 and thereafter, apportioned as follows:

(1) For existing units:

(A) forty-three thousand six hundred fifty-four (43,654) tons for CAIR NOx ozone season units under section 1(a)(1) of this rule for a control period during 2009 through 2014 and thirty-eight thousand ninety-five (38,095) tons for CAIR NOx ozone season units under section 1(a)(1) of this rule for a control period during 2015 and thereafter; and

(B) eight thousand five hundred sixty-four (8,564) tons for large affected units.

(2) For new unit allocation set-asides:

(A) two thousand two hundred ninety-eight (2,298) tons for CAIR NOx ozone season units under section 1(a)(1) of this rule for a control period during 2009 through 2014 and one thousand one hundred seventy-eight (1,178) tons for CAIR NOx ozone season units under section 1(a)(1) of this rule for a control period during 2015 and thereafter; and

(B) ninety-eight (98) tons for large affected units.

(3) For the energy efficiency and renewable energy allocation set-aside, one thousand one hundred fifteen (1,115) tons.

(b) The department shall allocate CAIR NOx ozone season allowances to CAIR units according to the following schedule:

(1) For CAIR ozone season units under section 1(a)(1) of this rule, a three (3) year allocation that is recorded three (3) years in advance of the control period that the allowances may be used as follows:

(A) Within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the CAIR NO_X ozone season allowance allocations, in a format prescribed by the U.S. EPA and in accordance with subsections (c) and (d), for the control periods in 2010 and 2011.

(B) By October 31, 2009, and October 31 every three (3) years thereafter, the department shall submit to the U.S. EPA the CAIR NO_X ozone season allowance allocations, in a format prescribed by the U.S. EPA and in accordance with subsections (c) and (d), for the control periods three (3) years, four (4) years, and five (5) years after the year of the allowance allocation.

(C) By July 31, 2009 and July 31 of each year thereafter, the department shall submit to the U.S. EPA the CAIR NO_X ozone season allowance allocations, in a format prescribed by the U.S. EPA and in accordance with subsections (e) and (f), for the control period in the year of the applicable deadline for submission under this rule.

(D) For the 2009 control period, the CAIR NOx ozone season allowances are the 2009 ozone season allowances that have been recorded by U.S. EPA on the effective date of this rule.

(2) For large affected units, within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the CAIR NO_x ozone season allowances for control periods in 2010 through 2014. By October 31, 2011, the department shall review the allocations in light of emission trends, new units, and other relevant factors to determine whether revisions are appropriate. For the control period in 2009, the CAIR NO_x ozone season allowances are the 2009 ozone season allowances that have been recorded by U.S. EPA on the effective date of this rule.

(3) If the department fails to submit to the U.S. EPA the CAIR NO_X ozone season allowance allocations in accordance with subdivision (1)(B), the U.S. EPA will assume that the allocations of CAIR NO_X ozone season allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the U.S. EPA will assume that the allocations equal eighty-three percent (83%) of the allocations for the control period that immediately precedes the applicable control period.

(4) If the department fails to submit to the U.S. EPA the CAIR NO_X ozone season allowance allocations in accordance with subdivision (1)(C), the U.S. EPA will assume that the allocations of CAIR NO_X ozone season allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the U.S. EPA will assume that the allocations equal eighty-three percent (83%) of the allocations for the control period that immediately precedes the applicable control period and except that any CAIR NO_X ozone season unit that would otherwise be allocated CAIR NO_X ozone season allowances under subsections (c), (d), (e), and (f), for the applicable control period shall be assumed to be allocated no CAIR NO_X ozone season allowances under subsections (e) and (f) for the applicable control period.

(5) The department shall make available for review to the public the CAIR NOx allowance allocations under subdivision (1)(B) on July 31 of each year allocations are made and shall provide a thirty (30) day opportunity for submission of objections to the CAIR NOx allowance allocations. Objections shall be limited to addressing whether the CAIR NOx allowance allocations are in accordance with this section. Based on any such objections, the department shall consider any objections and

input from affected sources and, if appropriate, adjust each determination to the extent necessary to ensure that it is in accordance with this section.

(c) The baseline heat input, in million British thermal units (mmBtu), used with respect to CAIR NO_X ozone season allowance allocations under subsection (d) for each CAIR NO_X ozone season unit shall be:

(1) For units commencing operation before January 1, 2001:

(A) For a CAIR NO_x ozone season allowance allocation under subsection (b)(1)(A), the average of the three (3) highest amounts of the unit's adjusted control period heat input for 1998 through 2004, with the adjusted control period heat input for each year calculated as follows:

(i) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by one hundred percent (100%).

(ii) If the unit is not coal-fired during the year, the unit's control period heat input for such year is multiplied by sixty percent (60%).

(B) For a CAIR NO_x ozone season allowance allocation under subsection (b)(1)(B), the unit's average of the three (3) highest amounts of the unit's adjusted control period heat input for the seven (7) years before when the CAIR NOx ozone season allocation is being calculated, with the adjusted control period heat input for each year calculated as follows:

(i) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by one hundred percent (100%).

(ii) If the unit is not coal-fired during the year, the unit's control period heat input for such year is multiplied by sixty percent (60%).

(2) For units commencing operation on or after January 1, 2001, and operating each calendar year during a period of three (3) or more consecutive calendar years, not to exceed seven (7), the average of the three (3) highest amounts of the unit's total converted control period heat input.

(3) A unit's control period heat input, and a unit's status as coal-fired or not coal-fired, for a calendar year under subdivision (1), and a unit's total tons of NO_X ozone season emissions during a calendar year under subsection (e)(3), shall be determined in accordance with 40 CFR 75*, to the extent the unit was otherwise subject to the requirements of 40 CFR 75* for the year, or shall be based on the best available data reported to the department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75* for the year.

(4) A unit's converted control period heat input for a calendar year under subdivision (2) equals one of the following:

(A) Except as provided in clause (B), the control period gross electrical output of the generator or generators served by the unit multiplied by eight thousand nine hundred (8,900) British thermal units per kilowatt hour (Btu/kWh) divided by one million (1,000,000) British thermal units per million British thermal units (Btu/mmBtu), provided that if a generator is served by two (2) or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year.

(B) For a unit that has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the unit multiplied by eight thousand nine hundred (8,900) British thermal units per kilowatt hour (Btu/kWh) plus the useful energy, in British thermal units (Btu), produced during the control period divided by eight-tenths (0.8), and with the sum divided by one million (1,000,000) British thermal units per million British thermal units (Btu/mmBtu).

(d) For the control period in 2009, the CAIR NO_x ozone season allowances are the 2009 ozone season allowances that have been recorded by U.S. EPA on the effective date of this rule. For each control period in 2010 and thereafter, the department shall allocate to all CAIR NO_X ozone season units that have a baseline heat input, as determined under subsection (c), a total amount of CAIR NO_X ozone season allowances as listed in subsection (a)(1), except as provided in subsection (f), in accordance with the following procedures:

(1) The department shall allocate CAIR NO_X ozone season allowances to each CAIR NO_X ozone season unit under this subsection, except large affection units, in an amount determined by multiplying the total amount of CAIR NOx ozone season allowances allocated under this subsection by the ratio of the baseline heat input of such CAIR NO_X ozone season unit to the total amount of baseline heat input of all such CAIR NO_X ozone season units and rounding to the nearest whole allowance as appropriate.

(2) The department shall allocate CAIR NOx ozone season allowances to each large affected unit in an amount equaling the following:

Source	Unit	Allowances
(A) Alcoa	1	1,089
	2	1,057
	3	1,026
(B) American Electric Power–Rockport	Auxiliary Boiler 1	2
	Auxiliary Boiler 2	1
(C) BP Amoco–Boiler House 1	1	21
	2	21
	3	21
	4	21
	5	22

(D) BP Amoco–Boiler House 3	1	252
	2	252
	3	252
	4	252
	5	252
(E) Citizens Thermal Energy	11	120
	12	138
	13	85
	14	75
	15	54
	16	69
(F) Ispat Inland	211	110
	212	110
	213	109
	401	255
	402	255
	403	257
	404	257
	405	344
	501	137
	502	137
	503	137
(G) New Energy	003	238
(H) Portside Energy	Auxiliary Boiler 1	50
	Auxiliary Boiler 2	5
	Combustion Turbine	34
(I) Purdue University	1	90
	2	91
	3	8
	5	72
(J) U.S. Steel–Gary Works	720 Boiler #1	107
	720 Boiler #2	107
	720 Boiler #3	107
	701 Boiler #1	78
	701 Boiler #2	78
	701 Boiler #3	78
	701 Boiler #5	86
	701 Boiler #6	145

(e) For each control period in 2009 and thereafter, the department shall allocate CAIR NO_X ozone season allowances to CAIR NO_X ozone season units that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input, as determined under subsection (c), in accordance with the following procedures:

(1) The department shall establish a separate new unit set-aside for each control period equal to the following:

(A) For CAIR NOx ozone season units under section 1(a)(1) of this rule, two thousand two hundred ninety-eight (2,298) tons for a control period during 2009 through 2014 and one thousand one hundred seventy-eight (1,178) tons for a control period during 2015 and thereafter.

(B) For large affected units, ninety-eight (98) tons in 2009 and thereafter.

(2) The CAIR designated representative of such a CAIR NO_X ozone season unit may submit to the department a request, in a format specified by the department, to be allocated CAIR NO_X ozone season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X ozone season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X ozone season allowances under subsection (d). The CAIR NO_X ozone season allowance allocation request must be submitted on or before February 1 of the first control period for which the CAIR NO_X ozone season allowances are requested and after the date on which the CAIR NO_X ozone season unit commences commercial operation.

(3) In a CAIR NO_X ozone season allowance allocation request under subdivision (2), the CAIR designated representative may request for a control period CAIR NO_X ozone season allowances in an amount not exceeding the CAIR NO_X ozone season unit's total tons of NO_X ozone season emissions during the calendar year immediately before such control period.

(4) The department shall review each CAIR NO_X ozone season allowance allocation request under subdivision (2) and shall allocate CAIR NO_X ozone season allowances for each control period pursuant to such request as follows:

(A) The department shall accept an allowance allocation request only if the request meets, or is adjusted by the department as necessary to meet, the requirements of subdivisions (2) and (3).

(B) On or after February 1 of the control period, the department shall determine the sum of the CAIR NO_X ozone season allowances requested, as adjusted under clause (A), in all allowance allocation requests accepted under clause (A) for the control period.

(C) If the amount of CAIR NO_X ozone season allowances in the new unit set-aside for the control period is greater than or equal to the sum under clause (B), then the department shall allocate the amount of CAIR NO_X ozone season allowances requested, as adjusted under clause (A), to each CAIR NO_X ozone season unit covered by an allowance allocation request accepted under clause (A).

(D) If the amount of CAIR NO_X ozone season allowances in the new unit set-aside for the control period is less than the sum under clause (B), then the department

shall allocate to each CAIR NO_X ozone season unit covered by an allowance allocation request accepted under clause (A) the amount of the CAIR NO_X ozone season allowances requested, as adjusted under clause (A), multiplied by the amount of CAIR NO_X ozone season allowances in the new unit set-aside for the control period, divided by the sum determined under clause (B), and rounded to the nearest whole allowance as appropriate.

(E) The department shall notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X ozone season allowances, if any, allocated for the control period to the CAIR NO_X ozone season unit covered by the request.

(f) If, after completion of the procedures under subsection (e)(4) for a control period, any unallocated CAIR NO_X ozone season allowances remain in a new unit set-aside for the control period, the department shall allocate to each CAIR NO_X ozone season unit that was allocated CAIR NO_X ozone season allowances under subsection (d) an amount of CAIR NO_X ozone season allowances equal to the following:

(1) For CAIR NOx units under section 1(a)(1), the total amount of such remaining unallocated CAIR NO_X ozone season allowances, multiplied by the unit's allocation under subsection (d), divided by forty-three thousand six hundred fifty-four (43,654) for a control period during 2009 through 2014, and thirty-eight thousand ninety-five (38,095) for a control period during 2015 and thereafter.

(2) For large affected units, the total amount of such remaining unallocated CAIR NO_X ozone season allowances, multiplied by the unit's allocation under subsection (d), divided by eight thousand five hundred sixty-four (8,564).

(g) For projects that reduce NOx emissions through the implementation of energy efficiency or renewable energy measures, or both, implemented during a control period beginning May 1, 2009, the department shall allocate NOx allowances in accordance with the following procedures:

(1) The energy efficiency and renewable energy allocation set-aside shall be allocated NOx allowances equal to one thousand one hundred fifteen (1,115) tons.

(2) Project sponsors may submit to the department a request, in writing, or in a format specified by the department, for NOx allowances as follows:

(A) Sponsors of energy efficiency or renewable energy projects in section 2(40)(A) through 2(40)(F) of this rule may request the reservation of NOx allowances, for one (1) control period in which the project is implemented. Project sponsors may reapply each year, not to exceed five (5) control periods for energy efficiency projects and for an unlimited number of years for renewable energy projects in section 2(40)(C) and 2(40)(D) of this rule. Requests for allowances may be made for projects implemented two (2) years before the effective date of this rule. Projects must equal at least one (1) ton of NO_x emissions and multiple projects may be aggregated into one (1) allowance allocation request to equal one (1) or more tons of NO_x emissions.

(B) The NO_x allowance allocation request must be submitted by September 1 of the calendar year that is one (1) year in advance of the first ozone control period for which the NO_x allowance allocation is requested.

(C) The NOx allowance allocation request for an integrated gasification combined cycle project under section 2(40)(G) of this rule must be submitted by September 1 of the calendar year that is one (1) year in advance of the first ozone control period for which the NOx allowance allocation is requested and after the date on which the department issues a permit to construct the CAIR NOx unit. For integrated gasification combined cycle projects, project sponsors may request the reservation of NOx allowances, based on the number of kilowatt hours of electricity generated based on an eighty-five percent (85%) capacity factor and expected heat rate of the unit. Project sponsors may reapply each year, not to exceed five (5) control periods. Requests for allowances may be made only for integrated gasification combined cycle projects which first start commercial operations in 2009 and beyond.

(3) In a NOx allowance allocation request made under this subsection, the CAIR designated representative may request for a control period, NOx allowances not to exceed the following:

(A) Projects in section 2(40)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by end-users or nonutility third parties receive allowances based upon the number of kilowatt hours of electricity saved during a control period and the following formula:

Allowances = (kWS × 0.0015)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(B) Projects in section 2(40)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by electric generating units shall be awarded allowances according to the following formula:

Allowances = (kWS × 0.000375/2,000)

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(C) Projects in section 2(40)(A) of this rule that claim

allowances based upon reductions in the consumption of energy other than electricity and that are not CAIR NOx ozone season units shall be awarded allowances according to the following formula:

Allowances = (((Et1/Pt1) - (Et2/Pt2)) × Pt2 × NPt2 × (NPt1/NPt2))/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period before project implementation.

Pt1 = Units of product produced per ozone control period before project implementation.

Et2 = Energy consumed in the most recent ozone control period.

Pt2 = Units of product produced in the most recent ozone control period.

NPt1 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units before project implementation.

NPt2 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units in the most recent ozone control period.

(D) Projects in section 2(40)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are CAIR NOx ozone season units shall be awarded allowances according to the following formula:

Allowances = (((Et1/Pt1) - (Et2/Pt2)) × Pt2 × NPt2 × (NPt1/NPt2) × 0.25)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period before project implementation.

Pt1 = Units of product produced per ozone control period before project implementation.

Et2 = Energy consumed in the most recent ozone control period.

Pt2 = Units of product produced in the most recent ozone control period.

NPt1 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units before project implementation.

NPt2 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units in the most recent ozone control period.

Product produced, as used in these formulas in this clause and clause (C), may include manufactured items; raw, intermediate, or final materials; or other products measured in discrete units and produced as a result of the consumption of energy in a specific process or piece of equipment. Claims for allowances must include documentation of NO_x emissions per British thermal unit both before and after implementation of the project for the energy-consuming process for which energy savings are claimed.

(E) Projects in section 2(40)(B) of this rule that claim allowances based upon highly efficient electricity generation using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end user, that meet the thresholds specified in section 2(40)(B) of this rule, that are not electric generating units or large affected units as defined in section 2 of this rule, and that are sponsored by end-users or nonutility third parties, receive allowances based upon the net amount of electricity generated during a control period and the following formula:

Allowances = (kWG × (0.0015 − NO_x))/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.

NO_x = The amount of NO_x produced during the generation of electricity, measured in pounds per kilowatt hour.

(F) Projects in section 2(40)(B) of this rule that claim allowances based upon highly efficient combined heat and power systems for the predominant use of a single end user, that meet the thresholds specified in section 2(40)(B) of this rule, that are not electric generating units or large affected units as defined in section 2 of this rule, and that are sponsored by end-users or nonutility third parties, receive allowances based upon the net amount of energy generated and used during an ozone control period and the following formula:

Allowances = (NOx conventional - NOx CHP)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.

NOx conventional = [(0.15 × 3,412 × kWG / 0.34) + (0.17 × HeatOut / 0.8)] / 1,000,000

NOx CHP = (BtuIn × NOxRate)/1,000,000.

Where: kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.
HeatOut = The number of British thermal units (Btu) of heat or steam effectively used for space, water, or industrial process heat during an ozone control period by the project.
NOxRate = NO_x emitted during normal system operation by the project, measured in pounds per million Btu of fuel input.
BtuIn = The number of British thermal units (Btu) of fuel used to produce electricity, heat, or steam during an ozone control period by the project.

(G) Projects in section 2(40)(B) and 2(40)(G) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone control period. Highly efficient electricity generation projects using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end user, that meet a rated energy efficiency threshold of sixty percent (60%) for combined cycle systems and forty percent (40%) for microturbines and fuel cells; or integrated gasification combined cycle, and that are sponsored by NO_x allowance account holders that own or operate units that produce electricity and are subject to the emission limitations of this rule receive allowances based upon the net amount of electricity generated during an ozone control period and the following formula:

Allowances = (kWG × (0.0015 - NOx) × 0.25)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.
kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.
NO_x = The amount of NO_x produced during the generation of electricity, measured in pounds per kilowatt hour.

(H) Projects in section 2(40)(C) and 2(40)(D) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone control period and according to the following formula:

Allowances = (kWG × 0.0015)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.
kWG = The number of kilowatt hours of electricity generated during an ozone control period by the project.

(I) Projects in section 2(40)(E), 2(40)(G), and 2(40)(F) of this rule receive allowances based upon the difference in emitted NO_x per megawatt hour of operation for units before and after replacement or improvement and according to the following formula:

Allowances = ((Et1 - Et2) × h) × 0.25)/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.
Et1 = The emission rate in pounds per megawatt hour of NO_x of the unit before improvement or replacement.
Et2 = The emission rate in pounds per megawatt hour of NO_x of the unit after improvement or replacement.
h = The number of megawatt hours of operation during the ozone control period.

(J) Projects in section 2(40)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are large affected units shall be awarded allowances according to the following formula:

Allowances = (kWS × NOx × 0.25)/2,000)

Where: Allowances = The number of allowances awarded to a project sponsor.
kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.
NOx = The amount of NOx produced during the generation of electricity, measured in pounds per kilowatt hour.

(K) Projects in section 2(40)(A) of this rule based upon energy efficiency other than electricity shall be awarded allowances according to the following formula:

Allowances = (0.17 × HeatOut / 0.8)/1,000,000/2,000

Where: Allowances = The number of allowances awarded to a project sponsor.
HeatOut = The number of British thermal units (Btu) of heat or steam effectively used for space, water, or industrial process heat during an ozone control period by the project.

Allowances shall be awarded only after verification of project implementation and certification of energy, emission, or electricity savings, as appropriate. The department shall consult the office of lieutenant governor concerning verification and certification.

(4) The department shall review, and allocate CAIR NOx allowances pursuant to, each allowance allocation request

by December 31 each year as follows:

(A) Upon receipt of the NO_x allowance allocation request, the department shall determine whether and shall make any necessary adjustments to the request to ensure that the number of allowances specified are consistent with the requirements of subdivision (3).

(B) If the energy efficiency and renewable energy allocation set-aside for the control period for which NO_x allowances are requested has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall allocate the amount of the NO_x allowances requested, as adjusted under clause (A), to the energy efficiency and renewable energy projects. Any unallocated allowances shall be distributed as follows:

(i) Fifty percent (50%) of the unallocated allowances shall be retained by the state to fund a grant program for energy efficiency and renewable energy projects. The grant program projects do not need to meet the one (1) ton of NOx emissions for singular or aggregated projects under subdivision (2).

(ii) Fifty percent (50%) of the unallocated allowances shall be returned to existing large affected units on a pro rata basis.

(C) If the energy efficiency and renewable energy allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), the department shall allocate the allocation set-aside on a pro rata basis, except that allowances requested for projects under section 2(40)(A), 2(40)(C), and 2(40)(D) of this rule shall be allocated first, allocated to projects under section 2(40)(B) and 2(40)(G) of this rule second, allocated to projects under section 2(40)(E) of this rule third, and allocated to projects under section 2(40)(F) of this rule fourth.

By December 31 of each year, the department shall take appropriate action under subdivision (4) and notify the CAIR NO_x designated representative that submitted the request and the U.S. EPA of the number of NO_x allowances allocated for the control period to the CAIR NO_x unit or energy efficiency or renewable energy projects.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-3-8)*

326 IAC 24-3-9 CAIR NOx ozone season allowance tracking system

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) Except as provided in section 12(f)(7) of this rule, upon receipt of a complete certificate of representation under section 6(h) of this rule, the U.S. EPA will establish a compliance account for the CAIR NO_X ozone season source for which the certificate of representation was submitted unless the source already has a compliance account.

(b) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_X ozone season allowances. An application for a general account may designate one (1) and only one (1) CAIR authorized account representative and one (1) and only one (1) alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative. The establishment of the general account shall be subject to the following:

(1) A complete application for a general account shall be submitted to the U.S. EPA and shall include the following elements in a format prescribed by the U.S. EPA:

(A) The following information concerning the CAIR authorized account representative and any alternate CAIR authorized account representative:

(i) Name.
(ii) Mailing address.
(iii) E-mail address, if any.
(iv) Telephone number.
(v) Facsimile transmission number, if any.

(B) Organization name and type of organization, if applicable.

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_X ozone season allowances held in the general account.

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_X ozone season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X ozone season trading program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the U.S. EPA or a court regarding the general account.".

(E) The signature of the CAIR authorized account

representative and any alternate CAIR authorized account representative and the dates signed.

(F) Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the application for a general account shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), the following shall apply:

(A) The U.S. EPA will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X ozone season allowances held in the general account in all matters pertaining to the CAIR NO_X ozone season trading program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the U.S. EPA or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(D) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_X ozone season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_X ozone season allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.".

(E) The U.S. EPA will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with clause (D).

(3) The following shall apply to changing the CAIR authorized account representative or alternate CAIR authorized account representative, and changes in persons with ownership interest:

(A) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subsection (b)(1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X ozone season allowances in the general account.

(B) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subsection (b)(1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X ozone season allowances in the general account.

(C) In the event a new person having an ownership interest with respect to CAIR NO_X ozone season allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the U.S. EPA or a court, as if the new person were included in such list.

(D) Within thirty (30) days following any change in the persons having an ownership interest with respect to CAIR NO_X ozone season allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a

revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X ozone season allowances in the general account to include the change.

(4) Once a complete application for a general account under subdivision (1) has been submitted and received, the U.S. EPA will rely on the application unless and until a superseding complete application for a general account under subdivision (1) is received by the U.S. EPA.

(5) Except as provided in subdivision (3)(A) or (3)(B), no objection or other communication submitted to the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the U.S. EPA under the CAIR NO_X ozone season trading program.

(6) The U.S. EPA will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X ozone season allowance transfers.

(c) The U.S. EPA will assign a unique identifying number to each account established under subsection (a) or (b).

(d) Following the establishment of a CAIR NO_X ozone season allowance tracking system account, all submissions to the U.S. EPA pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X ozone season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

(e) By December 1, 2006, the U.S. EPA will record in the CAIR NO_X ozone season source's compliance account the CAIR NO_X ozone season allowances allocated for the CAIR NO_X ozone season units at a source, as submitted by the department in accordance with section 8(b)(1)(A) of this rule, for the control periods in 2010 and 2011.

(f) By December 1, 2009, and every three (3) years thereafter, the U.S. EPA will record in the CAIR NO_X ozone season source's compliance account the CAIR NO_X ozone season allowances allocated for the CAIR NO_X ozone season units at the source, as submitted by the department or as determined by the U.S. EPA in accordance with section 8(b)(1)(A) and 8(b)(3) of this rule, for the control periods three (3), four (4), and five (5) years after the year of the allowance allocation.

(g) By September 1, 2009, and September 1 of each year thereafter, the U.S. EPA will record in the CAIR NO_X ozone season source's compliance account the CAIR NO_X ozone season allowances allocated for the CAIR NO_X ozone season units at the source, as submitted by the department or determined by the U.S. EPA in accordance with section 8(b)(1)(C) and 8(b)(4) of this rule, for the control period in the year of the applicable deadline for recordation under this subsection.

(h) When recording the allocation of CAIR NO_X ozone season allowances for a CAIR NO_X ozone season unit in a compliance account, the U.S. EPA will assign each CAIR NO_X ozone season allowance a unique identification number that shall include digits identifying the year of the control period for which the CAIR NO_X ozone season allowance is allocated.

(i) The CAIR NO_X ozone season allowances are available to be deducted for compliance with a source's CAIR NO_X ozone season emissions limitation for a control period in a given calendar year only if the CAIR NO_X ozone season allowances:

(1) were allocated for the control period in the year or a prior year;

(2) are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X ozone season allowance transfer correctly submitted for recordation under section 10(a) of this rule by the allowance transfer deadline for the control period; and

(3) are not necessary for deductions for excess emissions for a prior control period under subsection (j)(4) and (j)(5).

(j) The following shall apply to deductions for purposes of compliance with a unit's allocation:

(1) Following the recordation, in accordance with section 10(b) and 10(c) of this rule, of CAIR NO_X ozone season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the U.S. EPA will deduct from the compliance account CAIR NO_X ozone season allowances available under subsection (i) in order to determine whether the source meets the CAIR NO_X ozone season emissions limitation for the control period in one (1) of the following ways:

(A) Until the amount of CAIR NO_X ozone season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with section 11 of this rule, from all CAIR NO_X ozone season units at the source for the control period.

(B) If there are insufficient CAIR NO_X ozone season allowances to complete the deductions in clause (A), until no more CAIR NO_X ozone season allowances available under subsection (i) remain in the compliance account.

(2) The CAIR authorized account representative for a

source's compliance account may request that specific CAIR NO_X ozone season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subdivision (1), (4), or (5). Such request shall be submitted to the U.S. EPA by the allowance transfer deadline for the control period and include, in a format prescribed by the U.S. EPA, the identification of the CAIR NO_X ozone season source and the appropriate serial numbers.

(3) The U.S. EPA will deduct CAIR NO_X ozone season allowances under subdivision (1), (4), or (5) from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X ozone season allowances by serial number under subdivision (2), on a first-in, first-out (FIFO) accounting basis in the following order:

(A) Any CAIR NO_X ozone season allowances that were allocated to the units at the source, in the order of recordation.

(B) Any CAIR NO_X ozone season allowances that were allocated to any entity and transferred and recorded in the compliance account under section 10 of this rule, in the order of recordation.

(4) After making the deductions for compliance under subdivision (1) for a control period in a calendar year in which the CAIR NO_X ozone season source has excess emissions, the U.S. EPA will deduct from the source's compliance account an amount of CAIR NO_X ozone season allowances, allocated for the control period in the immediately following calendar year, equal to three (3) times the number of tons of the source's excess emissions.

(5) Any allowance deduction required under subdivision (4) shall not affect the liability of the owners and operators of the CAIR NO_X ozone season source or the CAIR NO_X ozone season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable state law.

(6) The U.S. EPA will record in the appropriate compliance account all deductions from such an account under subdivision (1), (4), or (5).

(7) The U.S. EPA may review and conduct independent audits concerning any submission under the CAIR NO_X ozone season trading program and make appropriate adjustments of the information in the submissions.

(8) The U.S. EPA may deduct CAIR NO_X ozone season allowances from or transfer CAIR NO_X ozone season allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision (7).

(k) CAIR NO_X ozone season allowances may be banked for future use or transfer in a compliance account or a general account. Any CAIR NO_X ozone season allowance that is held in a compliance account or a general account shall remain in such account unless and until the CAIR NO_X ozone season allowance is deducted or transferred under subsection (i), (j), or (l) or section 10 of this rule.

(l) The U.S. EPA may, at its sole discretion and on its own motion, correct any error in any CAIR NO_X ozone season allowance tracking system account. Within ten (10) business days of making such correction, the U.S. EPA will notify the CAIR authorized account representative for the account.

(m) The CAIR authorized account representative of a general account may submit to the U.S. EPA a request to close the account, which shall include a correctly submitted allowance transfer under section 10(a) of this rule for any CAIR NO_X ozone season allowances in the account to one or more other CAIR NO_X ozone season allowance tracking system accounts.

(n) If a general account has no allowance transfers in or out of the account for a twelve (12) month period or longer and does not contain any CAIR NO_X ozone season allowances, the U.S. EPA may notify the CAIR authorized account representative for the account that the account will be closed following twenty (20) business days after the notice is sent. The account will be closed after the twenty (20) day period unless, before the end of the twenty (20) day period, the U.S. EPA receives a correctly submitted transfer of CAIR NO_X ozone season allowances into the account under section 10(a) of this rule or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the U.S. EPA good cause as to why the account should not be closed. *(Air Pollution Control Board; 326 IAC 24-3-9)*

326 IAC 24-3-10 CAIR NOx ozone season allowance transfers

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) A CAIR authorized account representative seeking recordation of a CAIR NO_X ozone season allowance transfer shall submit the transfer to the U.S. EPA. To be considered correctly submitted, the CAIR NO_X ozone season allowance transfer shall include the following elements, in a format specified by the U.S. EPA:

(1) The account numbers for both the transferor and transferee accounts.

(2) The serial number of each CAIR NO_X ozone season allowance that is in the transferor account and is to be transferred.

(3) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

(b) Within five (5) business days, except as provided in subsection (c), of receiving a CAIR NO_X ozone season allowance transfer, the U.S. EPA will record a CAIR NO_X ozone season allowance transfer by moving each CAIR NO_X

ozone season allowance from the transferor account to the transferee account as specified by the request, provided the following:

(1) The transfer is correctly submitted under subsection (a).

(2) The transferor account includes each CAIR NO_X ozone season allowance identified by serial number in the transfer.

(c) A CAIR NO_X ozone season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X ozone season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the U.S. EPA completes the deductions under section 9(i) and 9(j) of this rule for the control period immediately before such allowance transfer deadline.

(d) Where a CAIR NO_X ozone season allowance transfer submitted for recordation fails to meet the requirements of subsection (b), the U.S. EPA will not record such transfer.

(e) The following notification requirements shall apply to CAIR NOx allowance transfers:

(1) Within five (5) business days of recordation of a CAIR NO_X ozone season allowance transfer under subsections (b) and (c) the U.S. EPA will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(2) Within ten (10) business days of receipt of a CAIR NO_X ozone season allowance transfer that fails to meet the requirements of subsection (b), the U.S. EPA will notify the CAIR authorized account representatives of both accounts subject to the transfer of the decision not to record the transfer and the reasons for such nonrecordation.

(f) Nothing in this section shall preclude the submission of a CAIR NO_X ozone season allowance transfer for recordation following notification of nonrecordation. *(Air Pollution Control Board; 326 IAC 24-3-10)*

326 IAC 24-3-11 Monitoring and reporting requirements

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) The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_X ozone season unit, shall comply with the monitoring, record keeping, and reporting requirements as provided in this rule and in 40 CFR 75, Subpart H*. For purposes of complying with such requirements, the definitions in section 2 of this rule and 40 CFR 72.2* shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system (CEMS) in 40 CFR 75* shall be replaced by the terms CAIR NO_X ozone season unit, CAIR designated representative, and continuous emission monitoring system (CEMS) respectively, as defined in section 2 of this rule. The owner or operator of a unit that is not a CAIR NO_X ozone season unit but that is monitored under 40 CFR 75.72(b)(2)(ii)* shall comply with the same monitoring, record keeping, and reporting requirements as a CAIR NO_X ozone season unit.

(b) The owner or operator of each CAIR NO_X ozone season unit shall:

(1) Install all monitoring systems required under this section for monitoring NO_X ozone season mass emissions and individual unit heat input. This includes all systems required to monitor NO_X ozone season emission rate, NO_X ozone season concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with 40 CFR 75.71* and 40 CFR 75.72*.

(2) Successfully complete all certification tests required under subsections (f) through (j) and meet all other requirements of this section and 40 CFR 75* applicable to the monitoring systems under subdivision (1).

(3) Record, report, and quality-assure the data from the monitoring systems under subdivision (1).

(c) The owner or operator shall meet the monitoring system certification and other requirements of subsection (b)(1) and (b)(2) on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subsection (b)(1) on and after the following dates:

(1) For the owner or operator of a CAIR NO_X ozone season unit that commences commercial operation before July 1, 2007, by May 1, 2008.

(2) For the owner or operator of a CAIR NO_X ozone season unit that commences commercial operation on or after July 1, 2007, and that reports on an annual basis under subsection (n)(3), by the later of the following dates:

(A) May 1, 2008, if the compliance date under clause (B) is before May 1, 2008.

(B) The earlier of:

(i) one hundred eighty (180) calendar days after the date on which the unit commences commercial operation; or

(ii) ninety (90) unit operating days after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR NO_X ozone season unit that commences operation on or after July 1, 2007, and that reports on a control period basis under subsection (n)(3)(B)(ii), by the later of the following dates:

(A) If the compliance date under clause (B) is not during a control period, May 1 immediately following the compliance date under clause (B).

(B) The earlier of:

(i) one hundred eighty (180) calendar days after the date on which the unit commences commercial operation; or

(ii) ninety (90) unit operating days after the date on which the unit commences commercial operation.

(4) For the owner or operator of a CAIR NO_X ozone season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under subdivisions (1), (2), (6), or (7) and that reports on an annual basis under subsection (n)(3), compliance by the earlier of:

(A) one hundred eighty (180) calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls; or

(B) ninety (90) unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

(5) For the owner or operator of a CAIR NO_X ozone season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under subdivision (1), (3), (6), or (7) and that reports on control period basis under subsection (n)(3)(B)(ii), by the later of the following dates:

(A) If the compliance date under clause (B) is not during a control period, May 1 immediately following the compliance date under clause (B).

(B) The earlier of:

(i) one hundred eighty (180) calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls; or

(ii) ninety (90) unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

(6) Notwithstanding the dates in subdivisions (1) through (3), for the owner or operator of a unit for which a CAIR NO_X ozone season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, by the date specified in section 12(f)(2) through 12(f)(4) of this rule.

(7) Notwithstanding the dates in subdivisions (1) through (3) and solely for purposes of section 4(c)(2) of this rule, for the owner or operator of a CAIR NO_X ozone season opt-in unit, by the date on which the CAIR NO_X ozone season opt-in unit enters the CAIR NO_X ozone season trading program as provided in section 12(f)(9) of this rule.

(d) Requirements for reporting data apply to this rule as follows:

(1) Except as provided in subdivision (2), the owner or operator of a CAIR NO_X ozone season unit that does not meet the applicable compliance date set forth in subsection (c) for any monitoring system under subsection (b)(1) shall, for each such monitoring system, determine, record, and report maximum potential or, as appropriate, minimum potential, values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with 40 CFR 75.31(b)(2) or 40 CFR 75.31(c)(3)*, 40 CFR 75, Appendix D, Section 2.4*, or 40 CFR 75, Appendix E, Section 2.5*, as applicable.

(2) The owner or operator of a CAIR NO_X ozone season unit that does not meet the applicable compliance date set forth in subsection (c)(4) for any monitoring system under subsection (b)(1) shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in 40 CFR 75.74(c)(7)*, 40 CFR, Subpart D*, 40 CFR 75, Subpart H*, 40 CFR, Appendix D*, or 40 CFR, Appendix E*, in lieu of the maximum potential or, as appropriate, minimum potential values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subsection (c)(4).

(e) The following shall apply to any monitoring system, alternative monitoring system, alternative reference method, or any other alternative for a CEMS required under this rule:

(1) No owner or operator of a CAIR NO_X ozone season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this section without having obtained prior written approval in accordance with subsection (o).

(2) No owner or operator of a CAIR NO_X ozone season unit shall operate the unit so as to discharge, or allow to be discharged, NO_X ozone season emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section and 40 CFR 75*.

(3) No owner or operator of a CAIR NO_X ozone season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X ozone season mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this section and 40 CFR 75*.

(4) No owner or operator of a CAIR NO_X ozone season unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this section, except under any one (1) of the following circumstances:

(A) During the period that the unit is covered by an exemption under section 3 of this rule.

(B) The owner or operator is monitoring emissions from the unit with another certified monitoring system

approved, in accordance with the applicable provisions of this section and 40 CFR 75*, by the department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system.

(C) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with subsection (h)(3)(A).

(f) The owner or operator of a CAIR NO_X ozone season unit shall be exempt from the initial certification requirements of subsection (h) for a monitoring system under subsection (b)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with 40 CFR 75* of this chapter.

(2) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21* and 40 CFR 75, Appendix B*, 40 CFR 75, Appendix D*, and 40 CFR 75, Appendix E* are fully met for the certified monitoring system described in subsection (b)(1).

The recertification provisions of this subsection and subsections (g) through (j) shall apply to a monitoring system under subsection (b)(1) exempt from initial certification requirements under this subsection.

(g) If the U.S. EPA has previously approved a petition under 40 CFR 75.17(a)* or 40 CFR 75.17(b)* for apportioning the NO_X emission rate measured in a common stack or a petition under 40 CFR 75.66* for an alternative to a requirement in 40 CFR 75.12* or 40 CFR 75.17*, the CAIR designated representative shall resubmit the petition to the U.S. EPA under subsection (o)(1) to determine whether the approval applies under the CAIR NO_X ozone season trading program.

(h) Except as provided in subsection (f), the owner or operator of a CAIR NO_X ozone season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system, which is a continuous emission monitoring system and an excepted monitoring system under 40 CFR 75, Appendix D* and 40 CFR 75, Appendix E*, under subsection (b)(1). The owner or operator of a unit that qualifies to use the low mass emissions accepted monitoring methodology under 40 CFR 75.19* or that qualifies to use an alternative monitoring system under 40 CFR 75, Subpart E* shall comply with the procedures in subsection (i) or (j) respectively.

(1) The owner or operator shall ensure that each continuous monitoring system under subsection (b)(1), including the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20* by the applicable deadline in subsection (c). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this section in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20* is required.

(2) Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under subsection (b)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21* or 40 CFR 75, Appendix B*, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b)*. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b)*. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_X monitoring system under 40 CFR 75, Appendix E*, under subsection (b)(1) are subject to the recertification requirements in 40 CFR 75.20(g)(6)*.

(3) Clauses (A) through (D) apply to both initial certification and recertification of a continuous monitoring system under subsection (b)(1). For recertifications, replace the words certification and initial certification with the word recertification, replace the word certified with the word recertified, and follow the procedures in 40 CFR 75.20(b)(5)* and 40 CFR 75.20(g)(7)* in lieu of the procedures in clause (E). Requirements for the certification approval process for initial certification and recertification, and loss of certification are as follows:

(A) The CAIR designated representative shall submit to the department, the appropriate EPA Regional Office, and the U.S. EPA written notice of the dates of certification testing, in accordance with subsection (m).

(B) The CAIR designated representative shall submit to the department a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63*.

(C) The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3)*. A provisionally certified monitoring system may be used under the CAIR NO_X ozone season trading program for a period not to exceed one hundred twenty (120) days after receipt by the department of the complete certification application for the monitoring system under clause (B). Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR 75*, shall

be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of the date of receipt of the complete certification application by the department.

(D) The department shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under clause (B). In the event the department does not issue such a notice within such one hundred twenty (120) day period, each monitoring system that meets the applicable performance requirements of 40 CFR 75* and is included in the certification application shall be deemed certified for use under the CAIR NO_X ozone season trading program.

(i) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75*, then the department shall issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(ii) If the certification application is not complete, then the department shall issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under item (iii). The one hundred twenty (120) day review period shall not begin before receipt of a complete certification application.

(iii) If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR 75* or if the certification application is incomplete and the requirement for disapproval under item (ii) is met, then the department shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification, as defined under 40 CFR 75.20(a)(3)*. The owner or operator shall follow the procedures for loss of certification in clause (E) for each monitoring system that is disapproved for initial certification.

(iv) The department or, for a CAIR NO_X ozone season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the U.S. EPA may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (l).

(E) If the department or the U.S. EPA issues a notice of disapproval of a certification application under clause (D)(iii) or a notice of disapproval of certification status under clause (D)(iv), then the following shall apply:

(i) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii)*, 40 CFR 75.20(g)(7)*, or 40 CFR 75.21(e)* and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i)* or 40 CFR 75.20(g)(7)*:

(AA) For a disapproved NO_X emission rate, NO_X-diluent, system, the maximum potential NO_X emission rate, as defined in 40 CFR 72.2*.

(BB) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in 40 CFR 75, Appendix A, Sections 2.1.2.1 and 2.1.4.1*.

(CC) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration, as applicable, as defined in 40 CFR 75, Appendix A, Sections 2.1.5, 2.1.3.1, and 2.1.3.2*.

(DD) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in 40 CFR 75, Appendix D, Section 2.4.2.1*.

(EE) For a disapproved excepted NO_X ozone season monitoring system under 40 CFR 75, Appendix E, the fuel-specific maximum potential NO_X ozone season emission rate, as defined in 40 CFR 72.2*.

(ii) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with clauses (A) and (B).

(iii) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's or the U.S. EPA's notice of disapproval, not later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

(i) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under 40 CFR 75.19* shall meet the applicable certification and recertification requirements in 40 CFR 75.19(a)(2)* and 40 CFR 75.20(h)*. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g)*.

(j) The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the U.S. EPA and, if applicable, the department under 40 CFR 75, Subpart E* shall comply with the applicable notification and application procedures of 40 CFR 75.20(f)*.

(k) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR 75*, data shall be substituted using the applicable missing data procedures in 40 CFR, Subpart D*, 40 CFR 75, Subpart H*, 40 CFR 75, Appendix D*, or 40 CFR 75, Appendix E*.

(l) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsections (f) through (j) or the applicable provisions of 40 CFR 75*, both at the time of the initial certification or recertification application submission and at the time of the audit, the department or, for a CAIR NO_X ozone season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the U.S. EPA will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection and subsection (k), an audit shall be either a field audit or an audit of any information submitted to the department or the U.S. EPA. By issuing the notice of disapproval, the department or the U.S. EPA revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in subsections (f) through (j) for each disapproved monitoring system.

(m) The CAIR designated representative for a CAIR NO_X ozone season unit shall submit written notice to the department and the U.S. EPA in accordance with 40 CFR 75.61*.

(n) The CAIR designated representative shall comply with all record keeping and reporting requirements in this subsection, the applicable record keeping and reporting requirements under 40 CFR 75.73*, and the requirements of section 6(e) of this rule.

(1) The owner or operator of a CAIR NO_X ozone season unit shall comply with requirements of 40 CFR 75.73(c)* and 40 CFR 75.73(e)* and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12, 12(e), and 12(f)(1) of this rule.

(2) The CAIR designated representative shall submit an application to the department within forty (45) days after completing all initial certification or recertification tests required under subsections (f) through (j), including the information required under 40 CFR 75.63*.

(3) The CAIR designated representative shall submit quarterly reports as follows:

(A) If the CAIR NO_X ozone season unit is subject to an acid rain emissions limitation or a CAIR NO_X emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this section, the CAIR designated representative shall meet the requirements of 40 CFR 75, Subpart H*, concerning monitoring of NO_X mass emissions, for such unit for the entire year and shall report the NO_X mass emissions data and heat input data for such unit, in a format prescribed by the U.S. EPA, for each calendar quarter beginning with:

(i) for a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008, through June 30, 2008; or

(ii) for a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection (c), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering May 1, 2008, through June 30, 2008.

(B) If the CAIR NO_X ozone season unit is not subject to an acid rain emissions limitation or a CAIR NO_X emissions limitation, then the CAIR designated representative shall meet either of the following:

(i) Meet the requirements of 40 CFR 75, Subpart H*, concerning monitoring of NO_X mass emissions, for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit in accordance with clause (A).

(ii) Meet the requirements of 40 CFR 75, Subpart H* for the control period, including the requirements in 40 CFR 75.74(c)*, and report NO_X mass emissions data and heat input data, including the data described in 40 CFR 75.74(c)(6)*, for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the U.S. EPA, for each calendar quarter beginning with:

(AA) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008.

(BB) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection (c), unless that date is not during a control period, in which case

reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date.

(C) The CAIR designated representative shall submit each quarterly report to the U.S. EPA within thirty (30) days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.73(f)*.

(D) For CAIR NO_X ozone season units that are also subject to an acid rain emissions limitation or the CAIR NO_X ozone season trading program or CAIR SO_2 trading program, quarterly reports shall include the applicable data and information required by 40 CFR 75, Subparts F through H* as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(4) The CAIR designated representative shall submit to the U.S. EPA a compliance certification, in a format prescribed by the U.S. EPA in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(A) the monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 75*, including the quality assurance procedures and specifications;

(B) for a unit with add-on NO_X ozone season emission controls and for all hours where NO_X data are substituted in accordance with 40 CFR 75.34(a)(1)*, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR 75, Appendix B* and the substitute data values do not systematically underestimate NO_X emissions; and

(C) for a unit that is reporting on a control period basis under subdivision 3(B)(ii), the NO_X mass emission rate and NO_X concentration values substituted for missing data under 40 CFR 75, Subpart D* are calculated using only values from a control period and do not systemically underestimate NO_X emissions.

(o) A petition requesting approval of alternatives to any requirement of this section may be made as follows:

(1) Except as provided in subdivision (3), the CAIR designated representative of a CAIR NO_X ozone season unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the U.S. EPA requesting approval to apply an alternative to any requirement of this section. Application of an alternative to any requirement of this section is in accordance with this section only to the extent that the petition is approved in writing by the U.S. EPA, in consultation with the department.

(2) The CAIR designated representative of a CAIR NO_X ozone season unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the department and the U.S. EPA requesting approval to apply an alternative to any requirement of this section. Application of an alternative to any requirement of this section is in accordance with this section only to the extent that the petition is approved in writing by both the department and the U.S. EPA.

(3) The CAIR designated representative of a CAIR NO_X ozone season unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 * to the department and the U.S. EPA requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under 40 CFR 75.72*. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the department and the U.S. EPA.

(p) The owner or operator of a CAIR NO_X ozone season unit that monitors and reports NO_X mass emissions using a NO_X ozone season concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR 75*.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-3-11)*

326 IAC 24-3-12 CAIR NOx ozone season opt-in units

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

Sec. 12. (a) A CAIR NO_X ozone season opt-in unit must be a unit that meets the following requirements:

(1) Is located in Indiana.

(2) Is not a CAIR NO_X ozone season unit under section 1 of this rule and is not covered by a retired unit exemption under section 3 of this rule that is in effect.

(3) Is not covered by a retired unit exemption under 40 CFR 72.8* that is in effect.

(4) Has or is required or qualified to have a Part 70 operating permit or other federally enforceable permit.

(5) Vents all of its emissions to a stack and can meet the monitoring, record keeping, and reporting requirements of section 11 of this rule.

(b) Except as otherwise provided in this rule, a CAIR NO_X ozone season opt-in unit shall be treated as a CAIR NO_X ozone season unit for purposes of applying sections 1 through 11 of this rule.

(c) Solely for purposes of applying, as provided in this section, the requirements of section 11 of this rule to a unit

for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this section, such unit shall be treated as a CAIR NO_X ozone season unit before issuance of a CAIR opt-in permit for such unit.

(d) Any CAIR NO_X opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this section, located at the same source as one or more CAIR NO_X ozone season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_X ozone season units.

(e) The CAIR designated representative of a unit meeting the requirements for a CAIR NO_X ozone season opt-in unit in subsection (a) may apply for an initial CAIR opt-in permit at any time, except as provided under subsection (h)(8) and (h)(9), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under section 7(c) of this rule.

(2) A certification, in a format specified by the department, that the unit:

(A) is not a CAIR NO_X ozone season unit under section 1 of this rule and is not covered by a retired unit exemption under section 3 of this rule that is in effect;

(B) is not covered by a retired unit exemption under 40 CFR 72.8* that is in effect;

(C) vents all of its emissions to a stack; and

(D) has documented heat input for more than eight hundred seventy-six (876) hours during the six (6) months immediately preceding submission of the CAIR permit application under section 7(c) of this rule.

(3) A monitoring plan in accordance with section 11 of this rule.

(4) A complete certificate of representation under section 6(h) of this rule consistent with subsection (d), if no CAIR designated representative has been previously designated for the source that includes the unit.

(5) A statement, in a format specified by the department, that the CAIR designated representative requests that the unit be allocated CAIR NO_X ozone season allowances under subsection (j)(4), subject to the conditions in subsections (f)(10) and (h)(8).

The CAIR designated representative of a CAIR NO_X ozone season opt-in unit shall submit a complete CAIR permit application under section 7(c) of this rule to renew the CAIR opt-in unit permit in accordance with the department's regulations for Part 70 operating permits, or the department's regulations for other federally enforceable permits if applicable, addressing permit renewal. Unless the department issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR NO_X ozone season trading program in accordance with subsection (h) or the unit becomes a CAIR NO_X ozone season unit under section 1 of this rule, the CAIR NO_X ozone season opt-in unit shall remain subject to the requirements for a CAIR NO_X ozone season opt-in unit, even if the CAIR designated representative for the CAIR NO_X ozone season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit.

(f) The department shall issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under subsection (e) is submitted in accordance with the following:

(1) The department and the U.S. EPA will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under subsection (e). A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with section 11 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(2) If the department and the U.S. EPA determine that the monitoring plan is sufficient under subdivision (1), the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit and all other applicable parameters, in accordance with section 11 of this rule, starting on the date of certification of the appropriate monitoring systems under section 11 of this rule and continuing until a CAIR opt-in permit is denied under subsection (f)(8) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X ozone season trading program in accordance with subsection (h).

(3) The monitoring and reporting under subdivision (2) shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X ozone season trading program under subdivision (9), during which period monitoring system availability must not be less than ninety percent (90%) under section 11 of this rule and the unit must be in full compliance with any applicable state or federal emissions or emissions-related requirements.

(4) To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with section 11 of this rule for one (1) or more control periods, in addition to the control period under subdivision (2), during which control periods monitoring system availability is not less than ninety percent (90%) under section 11 of this rule and the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements and which control periods begin not more than three (3) years before the unit enters the CAIR NO_X ozone season trading program under subdivision (9), such information shall be used as provided

in subdivisions (5) and (6).

(5) The unit's baseline heat rate shall equal one (1) of the following:

(A) If the unit's NO_X emissions rate and heat input are monitored and reported for only one (1) control period, in accordance with subdivisions (2) and (3), the unit's total heat input, in million British thermal units (mmBtu) for the control period.

(B) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one (1) control period, in accordance with subdivisions (2) through (4), the average of the amounts of the unit's total heat input, in million British thermal units (mmBtu) for the control periods under subdivisions (3) and (4).

(6) The unit's baseline NO_X emission rate shall equal one (1) of the following:

(A) If the unit's NO_X emissions rate and heat input are monitored and reported for only one (1) control period, in accordance with subdivisions (2) and (3), the unit's NO_X emissions rate, in pounds per million British thermal units (lb/mmBtu), for the control period.

(B) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one (1) control period, in accordance with subdivisions (3) and (4), and the unit does not have add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate in pounds per million British thermal units (lb/mmBtu) for the control period under subdivision (3) and the control periods under subdivision (4).

(C) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one (1) control period, in accordance with subdivisions (2) through (4), and the unit has add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate in pounds per million British thermal units (lb/mmBtu) for such control periods during which the unit has add-on NO_X emission controls.

(7) After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under subdivisions (5) and (6) and if the department determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X ozone season opt-in unit in subsection (a) and meets the elements certified in subsection (e)(2), the department shall issue a CAIR opt-in permit. The department shall provide a copy of the CAIR opt-in permit to the U.S. EPA, who will then establish a compliance account for the source that includes the CAIR NO_X ozone season opt-in unit unless the source already has a compliance account.

(8) Notwithstanding subdivisions (1) through (7), if at any time before issuance of a CAIR opt-in permit for the unit, the department determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_X ozone season opt-in unit in subsection (a) or meets the elements certified in subsection (e)(2), the department shall issue a denial of a CAIR NO_X ozone season opt-in permit for the unit.

(9) A unit for which an initial CAIR opt-in permit is issued by the department shall become a CAIR NO_X ozone season opt-in unit, and a CAIR NO_X ozone season unit, as of the later of May 1, 2009, or May 1 of the first control period during which such CAIR opt-in permit is issued.

(10) If the CAIR designated representative requests, and the department issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X ozone season opt-in unit of CAIR NO_X ozone season allowances under subsection (j)(4) and such unit is repowered after its date of entry into the CAIR NO_X ozone season trading program under subdivision (9), the repowered unit shall be treated as a CAIR NO_X ozone season opt-in unit replacing the original CAIR NO_X ozone season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber. Notwithstanding subdivisions (5) and (6), as of the date of start-up, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X ozone season emission rate as the original CAIR NO_X ozone season opt-in unit, and the original CAIR NO_X ozone season opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR NO_X ozone season unit.

(g) The following shall apply to the content of each CAIR opt-in permit:

(1) Each opt-in permit shall contain the following:

(A) All elements required for a complete CAIR permit application under section 7(c) of this rule.

(B) The certification in subsection (e)(2).

(C) The unit's baseline heat input under subsection (f)(5).

(D) The unit's baseline NO_X ozone season emission rate under subsection (f)(6).

(E) A statement whether the unit is to be allocated CAIR NO_X ozone season allowances under subsection (j)(4), subject to the conditions in subsections (f)(10) and (h)(8).

(F) A statement that the unit may withdraw from the CAIR NO_X ozone season trading program only in accordance with subsection (h).

(G) A statement that the unit is subject to, and the owners and operators of the unit must comply with the requirements of subsection (i).

(2) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under this section and sections 9 and 10 of this rule, every allocation, transfer, or deduction of CAIR NO_X ozone season allowances to or from the compliance account of the source that includes a CAIR NO_X ozone season opt-in unit covered by the CAIR opt-in permit.

(3) The CAIR opt-in permit shall be included, in a format prescribed by the department, in the CAIR permit for the source where the CAIR opt-in unit is located.

(h) The following requirements must be satisfied in order to withdraw an opt-in unit from the CAIR NOx trading program:

(1) Except as provided under subdivision (8), a CAIR NO_X ozone season opt-in unit may withdraw from the CAIR NO_X ozone season trading program, but only if the department issues a notification to the CAIR designated representative of the CAIR NO_X ozone season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X ozone season opt-in unit in accordance with subdivision (6).

(2) In order to withdraw a CAIR opt-in unit from the CAIR NO_X ozone season trading program, the CAIR designated representative of the CAIR NO_X ozone season opt-in unit shall submit to the department a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least four (4) years after September 30 of the year of entry into the CAIR NO_X ozone season trading program under subsection (f)(9). The request must be submitted not later than ninety (90) days before the requested effective date of withdrawal.

(3) Before a CAIR NO_X ozone season opt-in unit covered by a request under subdivision (1) may withdraw from the CAIR NO_X ozone season trading program and the CAIR opt-in permit may be terminated under subdivision (7), the following conditions must be met:

(A) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X ozone season opt-in unit must meet the requirement to hold CAIR NO_X ozone season allowances under section 4(c) of this rule and cannot have any excess emissions.

(B) After the requirement for withdrawal under clause (A) is met, the U.S. EPA will deduct from the compliance account of the source that includes the CAIR NO_X ozone season opt-in unit CAIR NO_X ozone season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_X ozone season allowances allocated to the CAIR NO_X ozone season opt-in unit under section 12(j) of this rule for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X ozone season units at the source, the U.S. EPA will close the compliance account, and the owners and operators of the CAIR NO_X ozone season opt-in unit may submit a CAIR NO_X ozone season allowance transfer for any remaining CAIR NO_X ozone season allowances to another CAIR NO_X ozone season allowance tracking system in accordance with section 10 of this rule.

(4) After the requirements for withdrawal under subdivisions (2) and (3) are met, including deduction of the full amount of CAIR NO_X ozone season allowances required, the department shall issue a notification to the CAIR designated representative of the CAIR NO_X ozone season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X ozone season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.

(5) If the requirements for withdrawal under subdivisions (2) and (3) are not met, the department shall issue a notification to the CAIR designated representative of the CAIR NO_X ozone season opt-in unit that the CAIR NO_X ozone season opt-in unit's request to withdraw is denied. Such CAIR NO_X ozone season opt-in unit shall continue to be a CAIR NO_X ozone season opt-in unit.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the CAIR permit covering the CAIR NO_X ozone season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under subdivision (4). The unit shall continue to be a CAIR NO_X ozone season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_X ozone season trading program concerning any control periods for which the unit is a CAIR NO_X ozone season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(7) If the department denies the CAIR NO_X ozone season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with subdivisions (2) and (3).

(8) Notwithstanding subdivisions (1) through (7), a CAIR NO_X ozone season opt-in unit shall not be eligible to withdraw from the CAIR NO_X ozone season trading program if the CAIR designated representative of the CAIR NO_X ozone season opt-in unit requests, and the department issues a CAIR NO_X ozone season opt-in permit providing for, allocation to the CAIR NO_X ozone season opt-in unit of CAIR NO_X ozone season allowances under subsection (j)(4).

(9) Once a CAIR NO_X ozone season opt-in unit withdraws from the CAIR NO_X ozone season trading program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under subsection (e) for such CAIR NO_X ozone season opt-in unit before the date that is four (4) years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit shall be treated as an initial application for a CAIR opt-in permit under subsection (f).

(i) When a CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule, then the CAIR designated representative shall notify in, writing, the department and the U.S. EPA of such change in the CAIR NO_X ozone season opt-in unit's regulatory status,

within thirty (30) days of such change. If there is a change in the regulatory status, the department and the U.S. EPA will take the following actions concerning the CAIR NOx opt-in source:

(1) When the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule, the department shall revise the CAIR NO_X ozone season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under section 7(d) and (7)(e) of this rule as of the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account of the source that includes the CAIR NO_X ozone season opt-in unit that becomes a CAIR NO_X ozone season unit under section 1 of this rule, CAIR NO_X ozone season allowances equal in amount to, and allocated for, the same or a prior control period as follows:

(A) Any CAIR NO_X ozone season allowances allocated to the CAIR NO_X ozone season opt-in unit under subsection (j)(4) for any control period after the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule.

(B) If the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule is not September 30, the CAIR NO_X ozone season allowances allocated to the CAIR NO_X ozone season opt-in unit under section 12(j) of this rule for the control period that includes the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(3) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_X ozone season unit that becomes a CAIR NO_X ozone season unit under section 1 of this rule contains the CAIR NO_X ozone season allowances necessary for completion of the deduction under subdivision (2).

(4) For every control period after the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule, the CAIR NO_X ozone season opt-in unit shall be treated, solely for purposes of CAIR NO_X ozone season allowance allocations under section 8(c) of this rule, as a unit that commences operation on the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule and shall be allocated CAIR NO_X ozone season allowances under section 8(c) of this rule.

(5) Notwithstanding subdivision (4), if the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule is not January 1, the following amount of CAIR NO_X ozone season allowances shall be allocated to the CAIR NO_X ozone season opt-in unit, as a CAIR NO_X ozone season unit, under section 8(c) of this rule for the control period that includes the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule:

(A) the amount of CAIR NO_X ozone season allowances otherwise allocated to the CAIR NO_X ozone season opt-in unit, as a CAIR NO_X ozone season unit, under section 8(c) of this rule for the control period, multiplied by;

(B) the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X ozone season opt-in unit becomes a CAIR NO_X ozone season unit under section 1 of this rule, divided by the total number of days in the control period; and

(C) rounded to the nearest whole allowance, as appropriate.

(j) The department shall allocate CAIR NOx allowances to CAIR NOx opt-in sources as follows:

(1) When the CAIR opt-in permit is issued under subsection (f)(7), the department shall allocate CAIR NO_X ozone season allowances to the CAIR NO_X ozone season opt-in unit, and submit to the U.S. EPA the allocation for the control period in which a CAIR NO_X ozone season opt-in unit enters the CAIR NO_X ozone season trading program under subsection (f)(9), in accordance with subdivision (3) or (4).

(2) By not later than July 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_X ozone season trading program under subsection (f)(9) and July 31 of each year thereafter, the department shall allocate CAIR NO_X ozone season allowances to the CAIR NO_X ozone season opt-in unit, and submit to the U.S. EPA the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X ozone season opt-in unit, in accordance with subdivision (3) or (4).

(3) For each control period for which a CAIR NO_X ozone season opt-in unit is to be allocated CAIR NO_X ozone season allowances, the department shall allocate in accordance with the following procedures:

(A) The heat input, in million British thermal units (mmBtu), used for calculating the CAIR NO_X ozone season allowance allocation shall be the lesser of the following:

(i) The CAIR NO_X ozone season opt-in unit's baseline heat input determined under subsection (f)(5).

(ii) The CAIR NO_X ozone season opt-in unit's heat input, as determined in accordance with section 11 of this rule, for the immediately prior control period, except when the allocation is being calculated for the

control period in which the CAIR NO_X ozone season opt-in unit enters the CAIR NO_X ozone season trading program under subsection (f)(9).

(B) The NO_X emission rate, in million British thermal units (mmBtu), used for calculating CAIR NO_X ozone season allowance allocations shall be the lesser of the following:

(i) The CAIR NO_X ozone season opt-in unit's baseline NO_X emissions rate, in pounds per million British thermal units (lb/mmBtu), determined under subsection (f)(6) and multiplied by seventy percent (70%).

(ii) The most stringent state or federal NO_X ozone season emissions limitation applicable to the CAIR NO_X ozone season opt-in unit at any time during the control period for which CAIR NO_X ozone season allowances are to be allocated.

(C) The department shall allocate CAIR NO_X ozone season allowances to the CAIR NO_X ozone season opt-in unit in an amount equaling the heat input under clause (A), multiplied by the NO_X ozone season emission rate under clause (B), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(4) Notwithstanding subdivision (3) and if the CAIR designated representative requests, and the department issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X ozone season opt-in unit of CAIR NO_X ozone season allowances under this subdivision, subject to the conditions in subsection (f)(10) and subsection (h), the department shall allocate to the CAIR NO_X ozone season opt-in unit as follows:

(A) For each control period in 2009 through 2014 for which the CAIR NO_X ozone season opt-in unit is to be allocated CAIR NO_X ozone season allowances as follows:

(i) The heat input, in million British thermal units (mmBtu), used for calculating CAIR NO_X ozone season allowance allocations shall be determined as described in subdivision (3)(A).

(ii) The NO_X emission rate, in pounds per million British thermal units (lb/mmBtu), used for calculating CAIR NO_X ozone season allowance allocations shall be the lesser of:

(AA) the CAIR NO_X ozone season opt-in unit's baseline NO_X emissions rate, in pounds per million British thermal units (lb/mmBtu), determined under subsection (f)(6); or

(BB) the most stringent state or federal NO_X emissions limitation applicable to the CAIR NO_X ozone season opt-in unit at any time during the control period in which the CAIR NO_X ozone season opt-in unit enters the CAIR NO_X ozone season trading program under subsection (f)(9).

(iii) The department shall allocate CAIR NO_X ozone season allowances to the CAIR NO_X ozone season opt-in unit in an amount equaling the heat input under clause (A)(i), multiplied by the NO_X emission rate under clause (A)(ii), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(B) For each control period in 2015 and thereafter for which the CAIR NO_X ozone season opt-in unit is to be allocated CAIR NO_X ozone season allowances as follows:

(i) The heat input, in million British thermal units (mmBtu), used for calculating the CAIR NO_X ozone season allowance allocations shall be determined as described in subdivision (3)(A).

(ii) The NO_X emission rate, in pounds per million British thermal units (lb/mmBtu), used for calculating the CAIR NO_X ozone season allowance allocation shall be the lesser of:

(AA) fifteen-hundredths (0.15) pounds per million British thermal units (lb/mmBtu);

(BB) the CAIR NO_X ozone season opt-in unit's baseline NO_X emissions rate, in pounds per million British thermal units (lb/mmBtu), determined under subsection (f)(6); or

(CC) the most stringent state or federal NO_X emissions limitation applicable to the CAIR NO_X ozone season opt-in unit at any time during the control period for which CAIR NO_X ozone season allowances are to be allocated.

(iii) The department shall allocate CAIR NO_X ozone season allowances to the CAIR NO_X ozone season opt-in unit in an amount equaling the heat input under clause (B)(i), multiplied by the NO_X emission rate under clause (B)(ii), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(5) The U.S. EPA will record, in the compliance account of the source that includes the CAIR NO_X ozone season opt-in unit, the CAIR NO_X ozone season allowances allocated by the department to the CAIR NO_X ozone season opt-in unit under subdivision (1).

(6) By September 1 of the control period in which a CAIR opt-in unit enters the CAIR NO_X ozone season trading program under subsection (f)(9) and September 1 of each year thereafter, the U.S. EPA will record, in the compliance account of the source that includes the CAIR NO_X ozone season ozone season opt-in unit, the CAIR NO_X ozone season ozone season allowances allocated by the department to the CAIR NO_X ozone season ozone season opt-in unit under subdivision (2).

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street, Washington, D.C. 20401 and are available for review and copying at the 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 24-3-12)*

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 April 5, 2006, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on new rules 326 IAC 24-1, 326 IAC 24-2, 326 IAC 24-3, and 326 IAC 10-4-16.

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 Susan Bem, Rules 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 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.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
LSA Document #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) has developed draft rule language for amendments to 326 IAC 8-3 concerning volatile organic compounds in organic solvent degreasers in Central Indiana. 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, 2005, Indiana Register (28 IR 3054).

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). A nonattainment designation means that ozone levels, measured by air monitors, have exceeded federal health standards on at least some days during the summer ozone season in recent years. The affected counties are: Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby. Indiana must put control measures into place in order to bring these counties into attainment by June 15, 2009.

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. The pollutants that form ozone, NO_x and VOC, are emitted from a number of sources including motor vehicle exhaust, industrial emissions, gasoline vapors, commercial and residential fuel burning and solvent use.

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, 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. Preliminary technical analyses indicate that new national and regional controls, including a NOx control rule for power plants, new motor vehicle and diesel engine standards, and new gasoline and diesel fuel standards, may bring Central Indiana into attainment of the standard, but additional reasonable controls will help to ensure compliance by 2009.

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). CIAQAG's preliminary recommendations for control measures presented at the September 30, 2005 meeting may be viewed at www.in.gov/idem/air/ciaqag. One of the regulatory measures recommended, and the subject of this rulemaking, is VOC controls on degreasing operations at commercial and industrial sources. It is 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. Sources in Clark, Floyd, Lake, and Porter Counties have been subject to these requirements since 1999.

Control measures need to be implemented in advance in order to collect data necessary to demonstrate attainment in Central Indiana by June 15, 2009. Allowing a phase-in compliance schedule for sources to obtain the necessary solvents, IDEM is proposing an effective date of April 1, 2007. 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.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

None of the elements of the draft rule are specifically imposed by federal law. However, the draft rule represents an appropriate alternative to help meet the federal law requirement of attainment in central Indiana. The materials IDEM relied on in the development of the draft rule are available to the public for public inspection at the Office of Air Quality.

Potential Fiscal Impact

Economic impacts will be based on costs of providing and purchasing compliant solvents. In 1998, other states adopting similar rules estimated cost efficiencies at $238 to $779 per ton of VOC reduced. Many of the affected sources are currently not required to report these emissions to IDEM and, therefore, IDEM does not have any indication how many sources will be affected in the 9-county Central Indiana area. IDEM specifically solicits comment on the potential fiscal impact of the draft rule language proposed in this rulemaking.

Public Participation and Work Group Information

The Central Indiana Air Quality Advisory Group (CIAQAG) was established in 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 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. Additional information may be found at http://www.in.gov/idem/air/ciaqag/.

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 plans 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).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from July 1, 2005, through August 1, 2005, 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:

Vacumet Corp. (VC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The total amount of degreaser solvents this facility uses annually is about 30 gallons or 200 pounds. We estimate a decrease of 0.02 lbs/hour of fugitive emissions with these proposed amendments. We perceive there will be a cost increase estimated at more than $100 per year. Unless there is a much larger amount of degreaser use in the nine (9) county region available for changing over to non-VOC degreasers, the amount would be much less than VOC emissions from driving a new vehicle on an average daily work commute.

We recommend the amendments be tempered with an offset such as banked emissions or some similar credit or incentive; monetary or non-monetary. In addition, a transition time of six (6) months to one (1) year after adoption will be needed to allow for an orderly change from one (1) degreaser to another. All permit holders in the nine-county region should be notified of the change by mail. IDEM's Rule Development Section needs to conduct an assessment of the total amount of VOC's that will be removed with the adoption of the proposed amendments. We believe that if the estimated amounts of decreased emissions are similar to what we have calculated, this rule change might be perceived as singling out small sources, thereby creating a credibility issue. (VC)

Response: Costs of solvents should be offset with less solvent usage because there will be a lower rate of evaporation. U.S. EPA requires permanent, enforceable reductions of ozone precursors in nonattainment areas, so no offsets are possible. IDEM is proposing an April 1, 2007, compliance date. The rule should be effective by mid-summer 2006, allowing greater than six (6) months compliance time. IDEM has, and will continue to, conduct outreach mailings to degreasing operations and solvent suppliers concerning the recommended rule amendments. Additional outreach and education will be provided by the solvent suppliers once the rule is effective. IDEM has estimated that implementation of the degreasing requirements in Central Indiana will provide a reduction of six (6) tons per summer day or two and seven-tenths percent (2.7%) total annualized reduction.

State and federal air quality plans and regulations have addressed the significant sources of air pollution in the central Indiana area. States are now looking further into the emission inventory to identify other categories where emissions reductions can be achieved cost effectively. IDEM is developing a low Reid Vapor Pressure rule to reduce VOCs from automobiles. Degreasing operations are a significant source of VOC

emissions relative to industrial and other area sources. The CIAQAG has recommended that IDEM proceed with this rulemaking.

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:

#05-165(APCB) Central Indiana VOC
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 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 January 3, 2006.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 8-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-3-1 Applicability

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

Sec. 1. (a) Sections 2 through 4 of this rule apply to the following:

(1) Existing facilities as of January 1, 1980, performing organic solvent degreasing operations located in:

(A) Clark **County;**
(B) Elkhart **County;**
(C) Floyd **County;**
(D) Lake **County;**
(E) Marion **County;**
(F) Porter **County;** and
(G) St. Joseph ~~Counties~~ **County;**

and which are located at sources which have potential emissions of ninety and seven-tenths (90.7) megagrams (one hundred (100) tons) or greater per year of VOC.

(2) New facilities after January 1, 1980, performing organic solvent degreasing operations located anywhere in the state.

(b) Sections 5 through 7 of this rule apply to the following:

(1) The following facilities performing organic solvent degreasing operations located in Clark, Elkhart, Floyd, Lake, Marion, Porter, and St. Joseph counties existing as of July 1, 1990:

(A) Cold cleaner degreasers without remote solvent reservoirs.

(B) Open top vapor degreasers with an air to solvent interface of one (1) square meter (ten and eight-tenths (10.8) square feet) or greater.

(C) Conveyorized degreasers with an air to solvent interface of two (2) square meters (twenty-one and six-tenths (21.6) square feet) or greater.

These facilities shall attain compliance with this rule no later than July 1, 1991.

(2) Any new facility, construction of which commences after July 1, 1990, of the types described in subdivision (1) located in any county.

(c) Section 8 of this rule applies to any person who sells, offers for sale, uses, or manufactures solvent for use in cold cleaning degreasers in the following counties:

(1) Effective May 27, 1999, the effective date of this subdivision, the following:
~~(1)~~ **(A)** Clark **County.**
~~(2)~~ **(B)** Floyd **County.**
~~(3)~~ **(C)** Lake **County.**
~~(4)~~ **(D)** Porter **County.**
(2) Effective April 1, 2007, the following:
(A) Boone County.
(B) Hamilton County.
(C) Hancock County.
(D) Hendricks County.
(E) Johnson County.
(F) Madison County.
(G) Marion County.
(H) Morgan County.
(I) Shelby County.

(Air Pollution Control Board; 326 IAC 8-3-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2537; filed Apr 18, 1990, 4:55 p.m.: 13 IR 1679; filed Apr 27, 1999, 9:06 a.m.: 22 IR 2854; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 2. 326 IAC 8-3-8 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-3-8 Material and record keeping requirements for cold cleaning degreasers

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

Sec. 8. (a) This section applies to the users, providers, and manufacturers of solvents for use in cold cleaning degreasers in:

(1) Clark **County;**
(2) Floyd **County;**

(3) Lake ~~and~~ **County;**
(4) Porter ~~Counties,~~ **County;**
(5) Boone County;
(6) Hamilton County;
(7) Hancock County;
(8) Hendricks County;
(9) Johnson County;
(10) Madison County;
(11) Marion County;
(12) Morgan County; and
(13) Shelby County;
except for solvents intended to be used to clean electronic components.

(b) As used in this section, "electronic components" means all components of an electronic assembly, including, but not limited to, the following:
(1) Circuit board assemblies.
(2) Printed wire assemblies.
(3) Printed circuit boards.
(4) Soldered joints.
(5) Ground wires.
(6) Bus bars.
(7) Any other associated electronic component manufacturing equipment.

(c) Material requirements are phased in as follows:
(1) On and after November 1, 1999, no person **in Clark, Floyd, Lake, and Porter counties** shall do the following:
(A) Cause or allow the sale of solvents for use in cold cleaning degreasing operations with a vapor pressure that exceeds two (2) millimeters of mercury (thirty-eight thousandths (0.038) pound per square inch) measured at twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) in an amount greater than five (5) gallons during any seven (7) consecutive days to an individual or business.
(B) Operate a cold cleaning degreaser with a solvent vapor pressure that exceeds two (2) millimeters of mercury (thirty-eight thousandths (0.038) pound per square inch) measured at twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit).
(2) On and after May 1, 2001, no person **in Clark, Floyd, Lake, and Porter counties** shall do the following:
(A) Cause or allow the sale of solvents for use in cold cleaning degreasing operations with a vapor pressure that exceeds one (1) millimeter of mercury (nineteen-thousandths (0.019) pound per square inch) measured at twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) in an amount greater than five (5) gallons during any seven (7) consecutive days to an individual or business.
(B) Operate a cold cleaning degreaser with a solvent vapor pressure that exceeds one (1) millimeter of mercury (nineteen-thousandths (0.019) pound per square inch) measured at twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit).
(3) On and after April 1, 2007, no person in Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby counties shall do the following:
(1) Cause or allow the sale of solvents for use in cold cleaning degreasing operations with a vapor pressure that exceeds one (1) millimeter of mercury (nineteen-thousandths (0.019) pound per square inch) measured at twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) in an amount greater than five (5) gallons during any seven (7) consecutive days to an individual or business.
(2) Operate a cold cleaning degreaser with a solvent vapor pressure that exceeds one (1) millimeter of mercury (nineteen-thousandths (0.019) pound per square inch) measured at twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit).

(d) On and after November 1, 1999, **in Clark, Floyd, Lake, and Porter counties and on and after April 1, 2007, in Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby counties,** the following record keeping requirements shall be followed:
(1) All persons subject to the requirements of subsection ~~(c)(1)(A)~~ ~~and~~ ~~(c)(2)(A)~~ **(c)** shall maintain all of the following records for each sale:
(A) The name and address of the solvent purchaser.
(B) The date of sale.
(C) The type of solvent.
(D) The volume of each unit of solvent sold.
(E) The total volume of the solvent.
(F) The true vapor pressure of the solvent measured in millimeters of mercury at twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit).
(2) All persons subject to the requirements of subsection (c)(1)(B) and (c)(2)(B) shall maintain each of the following records for each purchase:
(A) The name and address of the solvent supplier.
(B) The date of purchase.
(C) The type of solvent.
(D) The volume of each unit of solvent.
(E) The total volume of the solvent.
(F) The true vapor pressure of the solvent measured in millimeters of mercury at twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit).

(e) All records required by subsection ~~(d)~~ **(e)** shall be:
(1) retained on-site for the most recent three (3) year period; and ~~shall be~~
(2) reasonably accessible for an additional two (2) year period.
(Air Pollution Control Board; 326 IAC 8-3-8; filed Apr 27, 1999, 9:06 a.m.: 22 IR 2854; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

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 March 1, 2006, at 1:00 p.m., the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 8-3-1 and 326 IAC 8-3-8.

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 amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE

LSA Document #05-331(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT REDESIGNATION OF LAKE COUNTY FOR SULFUR DIOXIDE AND REVOCATION OF THE 1-HOUR OZONE STANDARD IN INDIANA

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 1-4-1 concerning the redesignation of Lake County to attainment for sulfur dioxide (SO_2) and the revocation of the 1-hour ozone standard for all areas in Indiana and has scheduled a public hearing before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-4-1.

AUTHORITY: IC 13-14-8; IC 13-14-9-8; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:
  (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
    (i) is or will be applicable to Indiana; and
    (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
  (B) a technical amendment with no substantive effect on an existing Indiana rule; or
  (C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:
  (A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;
  (B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and
  (C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

Redesignation of Lake County to Attainment for SO_2.

Based on monitored violations, a portion of Lake County in

Indiana was designated as primary nonattainment with the SO_2 National Ambient Air Quality Standards (NAAQS) on March 3, 1978 (43 FR 8962). In compliance with the Clean Air Act (CAA), IDEM developed and implemented various rules since that time designed to control emissions of SO_2 in Lake County.

Most recently, IDEM conducted extensive modeling and initiated a rulemaking to make additional amendments to SO_2 requirements for many sources in the nonattainment area that would provide the basis for requesting a redesignation of Lake County to attainment for SO_2. The completed rulemaking became effective in Indiana on June 24, 2005 and reflects a reduction of over 30,000 tons of SO_2 per year of allowable emissions from the emission limits in the 1989 State Implementation Plan. The last violation of the NAAQS for SO_2 was measured in 1980.

U.S. EPA published approval of the Lake County SO_2 rule and Indiana's request to redesignate Lake County to attainment for SO_2 in the Federal Register on September 26, 2005 (70 FR 56129). U.S. EPA approved the maintenance plan for these counties that includes maintaining existing programs and air monitoring. This action was effective October 26, 2005.

At this time, IDEM is proposing to amend Indiana's rules for consistency with the redesignation of Lake County to attainment for SO_2. This redesignation means that new major sources and major modifications at existing major sources will be subject to the Prevention of Significant Deterioration (PSD) rules in 326 IAC 2-2, rather than the more restrictive Emission Offset rules in 326 IAC 2-3. The PSD rules require Best Available Control Technology (BACT) and certain air quality demonstrations including continued compliance with the NAAQS and limits on incremental maximum allowable increases in ambient concentrations of SO_2.

A notice under IC 13-14-9-8 is appropriate for this rule action because it is a direct adoption of a federal requirement and contains no amendments that have a substantive effect on the scope or intended application of the federal rule. In addition, IDEM conducted a public hearing on July 26, 2005 in Gary, Indiana, as required by Section 100(a)(2) of the Clean Air Act to ensure proper public participation. U.S. EPA conducted a public process as well when it approved Indiana's redesignation request.

This rulemaking incorporates into state rules the September 26, 2005, final approval for redesignating Lake County to attainment for the SO_2 standard (70 FR 56129). Until this state rulemaking is effective, Lake County will be subject to the state's nonattainment rules, including the permitting rules. Rules included in the maintenance plan for these counties will continue to apply to the redesignated area.

Revocation of 1-Hour Ozone Standard and Technical Correction to 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) (Phase 1 Rule).

On April 30, 2004, U.S. EPA published the first phase of its final rule to implement the 8-hour ozone national ambient air quality standard (Phase 1 Rule). At that time U.S. EPA also published 8-hour ozone designations for all areas of the country. For most areas, the 8-hour ozone designations became effective on June 15, 2004. The Phase 1 Rule provided that the 1-hour ozone NAAQS would no longer apply for an area one (1) year following the effective date of the area's designation for the 8-hour ozone NAAQS.

On August 3, 2005, U.S. EPA published a final rule to codify the revocation of the 1-hour standard for those areas with effective 8-hour ozone designations (70 FR 44470). U.S. EPA revised the tables at 40 CFR Part 81 to indicate for which areas the 1-hour standard has been revoked, but retained the 1-hour ozone NAAQS designation and classification status as of the time of the effective date of designation for the 8-hour ozone NAAQS for the purposes of 40 CFR 51.905, Subpart X ("How do areas transition from the 1-hour NAAQS to the 8-hour NAAQS and what are the anti-backsliding provisions?").

These provisions establish that a specific list of applicable requirements (see 40 CFR 51.900(f)) that are in place under the nonattainment or maintenance programs for the 1-hour standard remain in place under the 8-hour standard. These provisions also specify that the 8-hour nonattainment classifications will govern New Source Review rather than the 1-hour classifications that have been revoked.

In the preamble to the June 2, 2003 proposed rule (68 FR 32802), U.S. EPA indicates that while it believes Congress gave U.S. EPA the authority to revise the ozone standard, it does not allow States to remove SIP-approved emission limits and other requirements in NSR permits issued under the 1-hour ozone standard. However, the proposed rule language does not address this issue.

Phase 2 of the 8-Hour Ozone Implementation Rule is anticipated to be published in the Federal Register by the end of this year or early in 2006. This rule may contain additional guidance on the impact of revocation of the 1-hour ozone standard on permitting requirements in affected areas. A separate state rulemaking action will be initiated, if necessary, to conform to the Phase 2 Implementation Rule.

In 40 CFR 81.315, the table entitled "Indiana - Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

> The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Indiana. The Evansville, Indianapolis, Louisville, and South Bend-Elkhart areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR Part 51, Subpart X.

(40 CFR Part 51, Subpart X, "Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard.")

The August 3, 2005, rule (70 FR 44470) also makes a technical correction to the last sentence in 40 CFR 51.905(c)(1) to reference 40 CFR Part 81, Subpart C as identifying the boundaries of areas and the area designations and classifications for the 1-hour ozone NAAQS that were in place as of the effective date of designation of the area for the 8-hour ozone NAAQS and also eliminates the reservation of Subpart E of Part 81 for the above identification purpose. This final rule was effective September 2, 2005.

Permitting Thresholds and Offset Ratios

Since U.S. EPA has revoked the 1-hour ozone standard for all areas in Indiana, IDEM proposes to incorporate by reference the revocation at 40 CFR 81.315 and the technical correction at 40 CFR 51.905 in order to make state and federal rules consistent.

As a result of revoking the 1-hour ozone standard, new major sources and major modifications at existing major sources in Lake and Porter Counties will no longer be subject to both the requirements for a "severe" ozone nonattainment area and the requirements for "moderate" nonattainment for the 8-hour ozone standard.

Under the definition of "major stationary source" at 326 IAC 2-3-1(aa), new sources in severe ozone nonattainment areas are major stationary sources if they emit or have the potential to emit 25 tons volatile organic compounds (VOCs) per year, and must comply with the permitting requirements for major stationary sources. In a moderate nonattainment area, the major stationary source obligations are triggered if a new source emits or has the potential to emit 100 tons VOC per year.

Modifications in a severe ozone nonattainment area at sources with emission increases that exceed the "de minimis" emission limit of 25 tons VOC per year, as defined in 326 IAC 2-3-1(q), are subject to more restrictive permitting requirements. In a moderate ozone nonattainment area, the emissions increase considered significant that triggers more restrictive permitting requirements is 40 tons VOC per year.

In addition, under the 1-hour ozone standard, major stationary sources in Lake and Porter Counties had to comply with the severe minimum offset ratio of 1.3 to 1 for VOCs in accordance with 326 IAC 2-3-3(a)(5). With revocation of the 1-hour ozone standard, major stationary sources in these counties must comply with the "moderate" nonattainment minimum offset ratio of 1.15 to 1 for VOCs.

Administrative Update

IDEM also proposes to remove two citations in 326 IAC 1-4-1 because they have been incorporated into state rules through updates to the Code of Federal Regulations (CFR) and are no longer needed.

A notice under IC 13-14-9-8 is appropriate for this rule action because it is a direct adoption of a federal requirement and contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

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

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking concerning redesignation of Lake County to attainment for sulfur dioxide and revocation of the 1-hour ozone standard as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) This rule is the direct adoption of federal requirements that are applicable to:

(a) The attainment designation for SO_2 in Lake County, Indiana, and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

(b) The revocation of the 1-hour ozone standard for all areas of the state, and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

(2) Indiana is required by federal law to adopt redesignations as established by the United States Environmental Protection Agency.

(3) In order to properly apply permitting requirements, Indiana must revoke the 1-hour ozone standard since permitting applicability now depends on attainment status of a given area under the 8-hour ozone standard.

(4) The public will benefit from prompt adoption of this rule, because:

(a) It recognizes that air quality in Lake County meets the NAAQS for SO_2 and provides consistency with the federal rule that redesignates Lake County to attainment for sulfur dioxide.

(b) It provides consistency with the federal rule that identifies areas in Indiana for which the 1-hour ozone standard has been revoked.

(5) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.

(6) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-4-1, AS AMENDED AT 28 IR 1182, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-4-1 Designations

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

Sec. 1. (a) The air pollution control board incorporates by reference the following documents concerning attainment status designations:

(1) 40 CFR 81.315* **as amended by:**

(A) 70 FR 44475 (August 3, 2005)*; and

(B) 70 FR 56131 (September 26, 2005)*.

~~(2) 66 FR 53665 (October 23, 2001)*.~~

~~(3) 68 FR 1370 (January 10, 2003)*.~~

~~(4)~~ **(2)** 69 FR 23858 (April 30, 2004)*.

(b) For purposes of permits that are subject to 326 IAC 2-3 due to the designations in subsection ~~(a)(4),~~ **(a)(2),** notwithstanding 326 IAC 2-3-2(a) and 326 IAC 2-3-2(e), the requirements of 326 IAC 2-3 apply to any permit that:

(1) would otherwise be subject to 326 IAC 2-3; and

(2) is issued on or after the effective date of the incorporation of 69 FR 23858.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056; filed Nov 15, 2002, 11:17 a.m.: 26 IR 1077; filed Dec 1, 2003, 10:00 a.m.: 27 IR 1167; filed Nov 12, 2004, 12:15 p.m.: 28 IR 1182)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on February 1, 2006, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 1-4-1.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act Coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
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 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
LSA Document #05-255(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING SANITARY SURVEYS, OPERATING REPORTS, CLASSIFICATION OF WATER TREATMENT PLANTS, AND CERTIFIED OPERATORS IN RESPONSIBLE CHARGE OF PUBLIC WATER SYSTEMS, AND MINOR CHANGES TO DISINFECTANTS, DISINFECTION BYPRODUCTS AND FILTER BACKWASH RECYCLING RULES AND NEW RULES FOR SITE-SPECIFIC OPERATOR AND THE EXAMINATION TO BECOME A SITE-SPECIFIC OPERATOR

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 327 IAC 8-2-8.2, 327 IAC 8-11-1, and 327 IAC 8-12 concerning drinking water standards sanitary surveys, water purification or treatment works operation and requirements, minor corrections to classification of water and wastewater treatment plants and distribution systems; examination and certification of operators, including definitions. Further amendments are being made to 327 IAC 8-2.5-6, 327 IAC 8-2.5-7, 327 IAC 8-2.5-8, 327 IAC 8-2.5-9, and 327 IAC 8-2.6-6 to incorporate minor corrections to monitoring, compliance, reporting, and record keeping requirements for disinfectants, disinfection byproducts and filter backwash recycling rules. Draft rule language for new rules has been added concerning the requirements for a site-specific operator and the examination of applicants to become a site-specific operator. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: October 1, 2005, Indiana Register (29 IR 219).

CITATIONS AFFECTED: 327 IAC 8-2-8.2; 327 IAC 8-2.5-6; 327 IAC 8-2.5-7; 327 IAC 8-2.5-8; 327 IAC 8-2.5-9; 327 IAC 8-2.6-6; 327 IAC 8-11-1; 327 IAC 8-12-1; 327 IAC 8-12-2; 327 IAC 8-12-3; 327 IAC 8-12-3.2; 327 IAC 8-12-3.4; 327 IAC 8-12-3.5; 327 IAC 8-12-3.6; 327 IAC 8-12-4; 327 IAC 8-12-4.5; 327 IAC 8-12-6; 327 IAC 8-12-7; 327 IAC 8-12-7.5.

AUTHORITY: IC 13-11-2; IC 13-12-3-1; IC 13-13-5-1; IC 13-14-9; IC 13-18-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

The Interim Enhanced Surface Water Treatment Rule (IESWTR), promulgated by the United States Environmental Protection Agency (U.S. EPA) on December 16, 1998, requires the state to have the authority to require public water systems utilizing surface water or ground water under the direct influence of surface water to correct significant deficiencies found during sanitary surveys conducted by the state. Rule changes are being made to allow the state to require these systems correct deficiencies within the time frames set forth in the federal requirements. 40 CFR 142.16(b)(1)(iii) requires states to have the appropriate rules or other authority to assure that Subpart H systems take necessary steps to address significant deficiencies found during sanitary surveys if such deficiencies are within the control of the PWS and its governing body. Therefore, changes are being made to some of the sections in 327 IAC 8-2.

327 IAC 8-11-1 currently requires systems to submit weekly reports of operation to the commissioner. This will be changed to require submittal of reports monthly rather than weekly and will clarify the information required to be included in these reports. The requirement for systems to submit reports to the state is found in 40 CFR 142.10(b)(6)(iv).

327 IAC 8-12-3.6 specifies number of site visits required by certified operators in responsible charge to public water systems. It is proposed to reduce the number of site visits required at small systems with limited treatment facilities and small distribution systems. The state is required to have operator certification standards under federal requirements promulgated February 5, 1999.

Other changes are also being made to 327 IAC 12 to make it easier for nontransient noncommunity and small community public water systems to maintain certified operators and to clarify system classifications.

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

There is no anticipated fiscal impact to this rule. The only section with potential fiscal impact is the section requiring correction of significant deficiencies found during sanitary surveys. This is a requirement from the federal regulations for the Interim Enhanced Surface Water Treatment Rule and the Long Term 1 Enhanced Surface Water Treatment Rule. Neither rule included correction of significant deficiencies as part of their analysis of the fiscal impacts of the rules. If systems are maintaining their water systems and operating them properly, there should not be any significant deficiencies to correct.

Public Participation and Workgroup Information

An external workgroup has not been formed specifically relating to this rulemaking; however, the sanitary survey changes and operational reporting requirements were addressed in part during the IDEM Operational Rules workgroup meetings, and the certified operator in responsible charge options were discussed during the IDEM Operator Certification workgroup meetings. Operational Rules workgroup meetings were held August 15, 2001, September 19, 2001, October 17, 2001, December 3, 2001, January 16, 2002, February 12, 2002, March 12, 2002, April 18, 2002, May 22, 2002, June 14, 2002, September 26, 2002, January 23, 2003, February 28, 2003, May 1, 2003, and June 6, 2003. Operator Certification workgroup meetings were held June 25, 1999, July 23, 1999, October 26, 1999, November 18, 1999, March 14, 2000, and July 6, 2000. A meeting of interested parties from these workgroups was held on April 22, 2005, to discuss potential draft rule language. A copy of the draft rule language was sent out to the parties who attended that meeting in July for comment prior to publication of the draft rule.

At this time, no new workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Larry Wu, Rules Section, Office of Water Quality at (317) 234-1805 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from October 1, 2005,

through October 31, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#05-255(WPCB) Sanitary Surveys, Operator Requirements and minor changes
Larry Wu, Chief
Rules Development Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
MC 65-40, IGCN 1255
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-8903. Please note that we are not able to take electronic (e-mail) submission of formal comments at this time.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by December 30, 2005.

Additional information regarding the rulemaking action may be obtained from Larry Wu, Rules Section, Office of Water Quality, (317) 234-1805 or (800) 451-6027 (in Indiana). Technical information concerning these rules may be obtained from Stacy Jones, Drinking Water Branch, Office of Water Quality, (317) 308-3292 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 8-2-8.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-8.2 Sanitary surveys

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 8.2. (a) Public water systems ~~which~~ **that** do not collect five (5) or more routine samples per month must undergo an initial sanitary survey by June 29, 1994, for community public water systems and June 29, 1999, for noncommunity water systems. Thereafter, **for systems using ground water, and from the above date until December 31, 2001, for Subpart H systems,** systems must undergo another sanitary survey every five (5) years or more frequently, as determined by the commissioner, except that noncommunity water systems using only protected and disinfected ground water, as determined by the commissioner, must undergo subsequent sanitary surveys at least every ten (10) years after the initial sanitary survey. **Beginning January 1, 2002, Subpart H systems must undergo sanitary surveys every three (3) years.** The commissioner must review the results of each sanitary survey to determine:

(1) whether the existing monitoring frequency is adequate; and

(2) what measures the system needs to undertake to improve drinking water quality.

(b) In conducting a sanitary survey of a system using ground water after ~~EPA~~ **the commissioner** approves a wellhead protection program under ~~Section 1428 of the Safe Drinking Water Act,~~ **327 IAC 8-4.1,** information on sources of contamination within the delineated wellhead protection area that was collected in the course of developing and implementing the program should be considered instead of collecting new information if the information was collected since the last time the system was subject to a sanitary survey.

(c) Sanitary surveys must be performed by the commissioner or an agent approved by the commissioner. The public water system must ensure that the sanitary survey takes place. **The public water system shall ensure that the commissioner or agent approved by the commissioner has access to the public water system and its records in order to verify compliance with this article and the federal Safe Drinking Water Act (42 U.S.C.A. 300f through 42 U.S.C.A. 300j-26).**

(d) The department shall evaluate each Subpart H system during a sanitary survey in accordance with this section to determine if significant deficiencies exist. Examples of significant deficiencies include the following:

(1) Significant source deficiencies, including the following:

(A) Raw water quality monitoring that is indicative of an immediate sanitary risk.

(B) Activities or pollution sources in the immediate source water area that will cause sanitary risks.

(C) Location of a well making it vulnerable to surface water run-off.

(D) Age of the well.

(E) Reliability of the source, including quality or quantity.

(F) A well that is not properly sealed.

(G) Spring boxes that are poorly constructed or subject to flooding.

(2) Significant treatment deficiencies, including the following:

(A) Inadequate disinfection contact time.

(B) One (1) or more of the treatment processes is incapable of producing water that meets standards under all conditions of raw water quality.

(C) No provisions to warn operators of membrane failures.

(D) Failure to have a disinfection profile required under 327 IAC 8-2.6-2 or 327 IAC 8-2.6-2.1.

(E) Evaluation of handling storage, use, and application of treatment chemicals.

(F) A review of the treatment process that includes assessment of the:

(i) operation;

(ii) maintenance;

(iii) record keeping; and

(iv) management practices;

of treatment facilities.

(3) Significant distribution and transmission deficiencies, including the following:

(A) Customers receiving, and using for drinking water, raw water from the raw water transmission main.

(B) A raw water transmission main equipped with a bypass around the treatment.

(C) Disinfectant residuals in the distribution system that regularly do not meet minimum required levels.

(D) Pressures in the distribution system below twenty (20) pounds per square inch (psi) during peak flow conditions.

(E) High leakage rates that pose unacceptable risks of back siphonage.

(4) Significant finished water storage deficiencies, including the following:

(A) Inadequate:

(i) elevation of storage facilities; or

(ii) sealing of tank to prevent entry of contaminants.

(B) Failure to inspect elevated tank for sanitary defects.

(5) Significant pumps, pump facilities, and control deficiencies, including the following:

(A) Storage of materials at the pumping station that:

(i) offer potential for contamination of the water; or

(ii) pose safety risks to operators.

(B) Cross connections are present.

(C) Auxiliary power is necessary to keep pressures above twenty (20) psi during commonly experienced power outages.

(D) Pump and facilities are not:

(i) designed appropriately; or

(ii) properly operated and maintained.

(6) Significant monitoring, reporting, and data verification deficiencies, including the following:

(A) The system has multiple violations for one (1) or more contaminants or disinfectant residuals.

(B) Operators are using improper procedures or methods when conducting on-site laboratory analyses.

(C) The system:

(i) is not using a certified laboratory;

(ii) has been falsifying data; or

(iii) fails to collect required samples.

(7) Significant system management and operations deficiencies, including the following:

(A) The system has inadequate personnel to meet the requirements of 327 IAC 8-12.

(B) The system has not:

(i) developed a plan for provision of water during emergencies; or

(ii) completed required vulnerability assessments and emergency action plans as required by Section 1433 of the Safe Drinking Water Act (42 U.S.C. 300i-2).

(C) The system does not have an annually updated emergency action plan.

(8) Failure to comply with the requirements of this article, including the failure to have a certified operator of the proper grade for more than forty-five (45) days.

(9) Any additional deficiencies that are found during a sanitary survey or other site visit that may have a potential to cause an immediate risk to human health.

(e) Subpart H systems shall respond in writing to any significant deficiency found during a sanitary survey and reported to the system by the commissioner. Response requirements are as follows:

(1) The response must:

(A) be made within forty-five (45) days of receipt of the report; and

(B) indicate:

(i) how the public water system will address significant deficiencies found during the sanitary survey; and

(ii) on what schedule the public water system will address significant deficiencies found during the sanitary survey.

(2) The report must indicate whether significant deficiencies found during the sanitary survey are under the control of the public water system.

(f) If a comprehensive performance evaluation is required under 327 IAC 8-2.6-5, the public water system shall implement any follow-up recommendations that result as part of the program.

(g) The commissioner may require a shorter time frame for response or addressing significant deficiencies if the commissioner determines the system poses an immediate health risk.

(h) The commissioner may initiate an enforcement referral for violations under this rule, including failure to do the following:

(1) Respond to the notice.

(2) Address significant deficiencies under the control of the public water system.

(3) Provide a schedule required under subsection (e)(1)(B)(ii).

(4) Follow the schedule required under subsection (e)(1)(B)(ii).

(5) Address significant deficiencies that have significant potential to have adverse effects on human health.

(Water Pollution Control Board; 327 IAC 8-2-8.2; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1022; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2158)

SECTION 2. 327 IAC 8-2.5-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.5-6 Monitoring requirements; disinfectant residuals, disinfection byproducts, and disinfection byproducts precursors

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 6. (a) General monitoring requirements for disinfectant residuals, disinfection byproducts, and disinfection byproducts precursors are as follows:

(1) Systems shall take all samples during normal operating conditions.

(2) Systems may consider multiple wells drawing water from a single aquifer as one (1) treatment plant for determining the minimum number of TTHM and HAA5 samples required. **The commissioner must approve all instances of multiple wells that are considered a single treatment plant because they draw water from a single aquifer.**

(3) Failure to monitor:

(A) in accordance with the monitoring plan required under subsection (f) is a monitoring violation; **and**

~~(4) Failure to monitor~~ **(B)** will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs.

~~(5)~~ **(4)** Systems may use only data collected under the provisions of subsection (b) or 40 CFR 141.140 through 40 CFR 141.144* to qualify for reduced monitoring.

(b) Monitoring requirements for disinfection byproducts are as follows:

(1) TTHM and HAA5 monitoring requirements are as follows:

(A) For routine monitoring, systems shall monitor at the frequency indicated in the following table:

ROUTINE MONITORING FREQUENCY FOR TTHM AND HAA5		
Type of System	Minimum Monitoring Frequency	Sample Location in the Distribution System
Subpart H system serving at least 10,000 persons	4 water samples per quarter per treatment plant	At least 25% of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods[1].
Subpart H system serving from 500 to 9,999 persons	1 water sample per quarter per treatment plant	Locations representing maximum residence time[1].
Subpart H system serving fewer than 500 persons	1 sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to 1 sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in clause (D).
System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	1 water sample per quarter per treatment plant[2]	Locations representing maximum residence time[1].
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	1 sample per year per treatment plant[2] during month of warmest water temperature	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than 1 sample is taken) exceeds the MCL, the system must increase monitoring to 1 sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets criteria in clause (D) for reduced monitoring.

[1]If a system elects to sample more frequently than the minimum required, at least twenty-five percent (25%) of all samples collected each quarter, including those taken in excess of the required frequency, must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

[2]Multiple wells drawing water from a single aquifer may be considered one (1) treatment plant for determining the minimum number of samples required.

(B) Systems may reduce monitoring, except as otherwise provided, in accordance with the following table:

REDUCED MONITORING FREQUENCY FOR TTHM AND HAA5		
IF YOU ARE A:	AND YOU HAVE MONITORED AT LEAST ONE YEAR AND YOUR:	YOU MAY REDUCE MONITORING TO THIS LEVEL:
Subpart H system serving at least 10,000 persons that has a source water annual average TOC level, before any treatment, ≤ 4.0 mg/L	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L	1 sample per treatment plant per quarter at distribution system location reflecting maximum residence time
Subpart H system serving from 500 to 9,999 persons that has a source water annual average TOC level, before any treatment, ≤ 4.0 mg/L	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L	1 sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. NOTE: Any Subpart H system serving fewer than 500 persons may not reduce its monitoring to less than ~~one~~ **1** sample per treatment plant per year.
System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L	1 sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L for ~~two~~ **2** consecutive years OR TTHM annual average ≤0.020 mg/L and HAA5 annual average ≤0.015 mg/L for 1 year	1 sample per treatment plant per 3 year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the 3 year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring

(C) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems that must monitor quarterly) or the result of the sample (for systems that must monitor ~~no~~ **not** more frequently than annually) is no more than sixty-thousandths (0.060) milligram per liter and forty-five thousandths (0.045) milligram per liter for TTHMs and HAA5, respectively. Systems that do not meet these levels shall resume monitoring at the frequency identified in the table contained in clause (A) (minimum monitoring frequency column) in the quarter immediately following the monitoring period in which the system exceeds those levels. For systems using only ground water not under the direct influence of surface water and serving fewer than ten thousand (10,000) persons, if either the:

(i) TTHM annual average is greater than eighty-thousandths (0.080) milligram per liter; or ~~the~~

(ii) HAA5 annual average is greater than ~~sixty-thousandth~~ **sixty-thousandths** (0.060) milligram per liter;

the system shall go to the increased monitoring identified in the table contained in clause (A) (sample location column) in the quarter immediately following the monitoring period in which the system exceeds those levels.

(D) Systems on increased monitoring may return to routine monitoring if, after at least one (1) year of monitoring, their:

(i) TTHM annual average is equal to or less than sixty-thousandths (0.060) milligram per liter; and ~~their~~

(ii) HAA5 annual average is equal to or less than forty-five thousandths (0.045) milligram per liter.

(E) A system may return to routine monitoring at the commissioner's discretion.

(2) CWSs and NTNCWSs using chlorine dioxide for disinfection or oxidation must conduct monitoring for chlorite as follows:

(A) Routine monitoring is as follows:

(i) Systems shall take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system shall take additional samples in the distribution system the following day at the locations required by clause (B), in addition to the sample required

at the entrance to the distribution system.

(ii) Systems shall take a three (3) sample set each month in the distribution system. The system shall take one (1) sample at each of the following locations:

(AA) Near the first customer.

(BB) At a location representative of average residence time.

(CC) At a location reflecting maximum residence time in the distribution system.

Any additional routine sampling must be conducted in the same manner (as three (3) sample sets, at the specified locations). The system may use the results of additional monitoring conducted under clause (B) to meet the requirement for monitoring in this clause.

(B) On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system shall take three (3) chlorite distribution system samples at the following locations:

(i) As close to the first customer as possible.

(ii) In a location representative of average residence time.

(iii) As close to the end of the distribution system as possible **at a point reflecting maximum residence time in the distribution system.**

(C) Monitoring for chlorite may be reduced as follows:

(i) Chlorite monitoring at the entrance to the distribution system required by clause (A)(i) may not be reduced.

(ii) Chlorite monitoring in the distribution system required by clause (A)(ii) may be reduced to one (1) three (3) sample set per quarter after one (1) year of monitoring where no individual chlorite sample taken in the distribution system under clause (A)(ii) has exceeded the chlorite MCL and the system has not been required to conduct monitoring under clause (B). The system may remain on the reduced monitoring schedule unless one (1) of the three (3) individual chlorite samples taken monthly in the distribution system under clause (A)(ii) exceeds the chlorite MCL or the system is required to conduct monitoring under clause (B), at which time the system shall revert to routine monitoring.

(3) Monitoring for bromate is as follows:

(A) CWSs and NTNCWSs using ozone for disinfection or oxidation shall take one (1) sample per month for each treatment plant in the system using ozone. Systems shall take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(B) Systems required to analyze for bromate may reduce monitoring from monthly to once per quarter if the system demonstrates that the average source water bromide concentration is less than five-hundredths (0.05) milligram per liter based upon representative monthly bromide measurements for one (1) year. The system may remain on reduced bromate monitoring unless the running annual average source water bromide concentration, computed quarterly, is equal to or greater than five-hundredths (0.05) milligram per liter based upon representative monthly measurements. If the running annual average source water bromide concentration is equal to or greater than five-hundredths (0.05) milligram per liter, the system shall resume routine monitoring required by clause (A).

(c) Monitoring requirements for disinfectant residuals are as follows:

(1) Monitoring for chlorine and chloramines is as follows:

(A) CWSs and NTNCWSs that use chlorine or chloramines shall measure the residual disinfectant level in the distribution system ~~when~~ **at the same points and at the same time as** total coliforms are sampled, as specified in 327 IAC 8-2-8. Subpart H systems may use the results of residual disinfectant concentration sampling conducted under 327 IAC 8-2-8.8(d) for systems ~~which~~ **that** filter ~~in lieu~~ **instead** of taking separate samples.

(B) Monitoring for chlorine or chloramines may not be reduced.

(2) Monitoring for chlorine dioxide is as follows:

(A) CWSs, NTNCWSs, and TWSs that use chlorine dioxide for disinfection or oxidation shall take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system shall take samples in the distribution system the following day at the locations required by clause ~~(D)~~, **(B)** in addition to the sample required at the entrance to the distribution system.

(B) On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three (3) chlorine dioxide distribution system samples.

(i) If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system, for example, no booster chlorination, the system shall take three (3) samples as close to the first customer as possible at intervals of at least six (6) hours.

(ii) If chlorine is used to maintain a disinfectant residual in the distribution system and there are one (1) or more disinfection addition points after the entrance to the distribution system, for example, booster chlorination, the system shall take one (1) sample at each of the following locations:

(AA) As close to the first customer as possible.

(BB) In a location representative of average residence time.

(CC) As close to the end of the distribution system as possible, reflecting maximum residence time in the distribution system.

(C) Chlorine dioxide monitoring may not be reduced.

(d) Monitoring requirements for disinfection byproduct precursors (DBPP) are as follows:

(1) Routine monitoring is required as follows:

(A) Subpart H systems ~~which~~ **that** use conventional filtra-

tion treatment, as defined in 327 IAC 8-2-1, shall monitor each treatment plant for TOC ~~no~~ **not** later than the point of combined filter effluent turbidity monitoring and representative of the treated water.

(B) All systems required to monitor under this subdivision shall also monitor for TOC in the source water ~~prior to~~ **before** any treatment at the same time as monitoring for TOC in the treated water. These samples, source water and treated water, are referred to as paired samples.

(C) At the same time as the source water sample is taken, all systems shall monitor for alkalinity in the source water ~~prior to~~ **before** any treatment.

(D) Systems shall take one (1) paired sample and one (1) source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(2) Subpart H systems with an average treated water TOC of less than:

(A) two and zero-tenths (2.0) milligrams per liter for two (2) consecutive years; or ~~less than~~

(B) one (1.0) milligram per liter for one (1) year;

may reduce monitoring for both TOC and alkalinity to one (1) paired sample and one (1) source water alkalinity sample per plant per quarter. The system shall revert to routine monitoring in the month following the quarter when the annual average treated water TOC is greater than or equal to two and zero-tenths (2.0) milligrams per liter.

(e) Systems required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter if the system demonstrates that the average source water bromide concentration is less than five-hundredths (0.05) milligram per liter based upon representative monthly measurements for one (1) year. The system shall continue bromide monitoring to remain on reduced bromate monitoring.

(f) Each system required to monitor under this section shall develop and implement a monitoring plan as follows:

(1) The system shall maintain the plan and make it available for inspection by the commissioner and the general public ~~no~~ **not** later than thirty (30) days following the applicable compliance dates in section 4(b) **and 4(c)** of this rule.

(2) All Subpart H systems serving more than three thousand three hundred (3,300) people shall submit a copy of the monitoring plan to the commissioner ~~no~~ **not** later than the date of the first report required under section 8 of this rule.

(3) The commissioner may also require any other system to submit a monitoring plan.

(4) After review, the commissioner may require changes in any plan elements.

(5) The plan must include, at a minimum, the following elements:

(A) Specific locations and schedules for collecting samples for any parameters included in this section.

(B) How the system will calculate compliance with MCLs, MRDLs, and treatment techniques.

(C) If:

(i) approved for monitoring as a consecutive system; or ~~if~~

(ii) providing water to a consecutive system;

the sampling plan must reflect the entire distribution system.

*40 CFR 141.140 through ~~141.144~~ **40 CFR 141.144** is incorporated by reference and is available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room ~~1255,~~ **N1255,** Indianapolis, Indiana ~~46206.~~ **46204.** *(Water Pollution Control Board; 327 IAC 8-2.5-6; filed May 1, 2003, 12:00 p.m.: 26 IR 2844)*

SECTION 3. 327 IAC 8-2.5-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.5-7 Compliance requirements; disinfectants and disinfection byproducts

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 7. (a) General compliance requirements for disinfectants and disinfection byproducts are as follows:

(1) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the:

(A) system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average; **and**

~~(2) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the~~ **(B)** system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

~~(3)~~ **(2)** All samples taken and analyzed under ~~the provisions of~~ this rule must be included in determining compliance, even if that number is greater than the minimum required.

~~(4)~~ **(3)** If, during the first year of monitoring under section 6 of this rule, any particular quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

(b) Compliance requirements for disinfection byproducts are as follows:

(1) Compliance requirements for TTHMs and HAA5 are as follows:

(A) For systems monitoring quarterly, compliance with MCLs in ~~section 1(b)~~ **section 2(a)** of this rule will be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed by section 6(b)(1) of this rule.

(B) For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under ~~the provisions of~~ section 6(b)(1) of this rule does not exceed the MCLs in ~~section 1~~

section 2 of this rule. If the average of these samples exceeds the MCL, the system shall increase monitoring to once per quarter per treatment plant. Such a system is not in violation of the MCL until it has completed one (1) year of quarterly monitoring, unless the result of fewer than four (4) quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring shall calculate compliance by including the sample that triggered the increased monitoring plus the following three (3) quarters of monitoring.

(C) If the running annual arithmetic average of quarterly averages covering any consecutive four (4) quarter period exceeds the MCL, the system:

(i) is in violation of the MCL; and

(ii) must notify the public ~~pursuant to~~ **under** 327 IAC 8-2.1-7, in addition to reporting to the commissioner ~~pursuant to~~ **under** section 8 of this rule.

(D) If a public water system fails to complete four (4) consecutive quarters of monitoring, compliance with the MCL for the last four (4) quarter compliance period must be based on an average of the available data.

(2) Compliance requirements for bromate will be based on a running annual arithmetic average, computed quarterly, of:

(A) monthly samples; or

(B) for months in which the system takes more than one (1) sample, the average of all samples taken during the month;

collected by the system as prescribed by section 6(b)(3) of this rule. If the average of samples covering any consecutive four (4) quarter period exceeds the MCL, the system is in violation of the MCL and shall notify the public ~~pursuant to~~ **under** 327 IAC 8-2.1-7, in addition to reporting to the agency ~~pursuant to~~ **under** section 8 of this rule. If a public water system fails to complete twelve (12) consecutive months of monitoring, compliance with the MCL for the last four (4) quarter compliance period must be based on an average of the available data.

(3) Compliance requirements for chlorite will be based on an arithmetic average of each three (3) sample set taken in the distribution system as prescribed by section 6(b)(2)(A)(ii) and 6(b)(2)(B) of this rule. If the arithmetic average of any three (3) sample sets exceeds the MCL, the system:

(A) is in violation of the MCL; and

(B) shall notify the public ~~pursuant to~~ **under** 327 IAC 8-2.1-3 through 327 IAC 8-2.1-17, in addition to reporting to the commissioner ~~pursuant to~~ **under** section 8 of this rule.

(c) Compliance requirements for disinfectant residuals are as follows:

(1) Compliance requirements for chlorine and chloramines are as follows:

(A) Compliance will be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under section 6(c)(1) of this rule. If the average covering any consecutive four (4) quarter period exceeds the MRDL, the system:

(i) is in violation of the MRDL; and

(ii) must notify the public ~~pursuant to~~ **under** 327 IAC 8-2.1-7, in addition to reporting to the commissioner ~~pursuant to~~ **under** section 8 of this rule.

(B) Where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted ~~pursuant to~~ **under** section 8 of this rule must clearly indicate which residual disinfectant was analyzed for each sample.

(2) Compliance requirements for chlorine dioxide are as follows:

(A) Compliance requirements for acute violations are as follows:

(i) Compliance will be based on consecutive daily samples collected by the system under section 6(c)(2) of this rule.

(ii) If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (1) or more of the three (3) samples taken in the distribution system exceed the MRDL, the system is in violation of the MRDL and must:

(AA) take immediate corrective action to lower the level of chlorine dioxide below the MRDL; and ~~must~~

(BB) notify the public ~~pursuant to~~ **under** the procedures for acute health risks in 327 IAC 8-2.1-3 through 327 IAC 8-2.1-17.

(iii) Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation, and the system shall notify the public of the violation in accordance with the provisions for acute violations under 327 IAC 8-2.1-7 through 327 IAC 8-2.1-17, in addition to reporting the commissioner ~~pursuant to~~ **under** section 8 of this rule.

(B) Compliance requirements for nonacute violations are as follows:

(i) Compliance will be based on consecutive daily samples collected by the system under section 6(c)(2) of this rule.

(ii) If any two (2) consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and must take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public ~~pursuant to~~ **under** the procedures for nonacute health risks in 327 IAC 8-2.1-7 through 327 IAC 8-2.1-17, in addition to reporting to the commissioner ~~pursuant to~~ **under** section 8 of this rule.

(iii) Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation, and the system must notify the public of the violation in accordance with the provisions

for nonacute violations under 327 IAC 8-2.1-7, in addition to reporting the commissioner ~~pursuant to~~ **under** section 8 of this rule.

(d) Compliance for disinfection byproduct precursors (DBPP) are as follows:

(1) Compliance will be determined as specified by section 9 of this rule.

(2) Systems may begin monitoring to determine whether Step 1 TOC removals can be met twelve (12) months ~~prior to~~ **before** the compliance date for the system. This monitoring is not required, and failure to monitor during this period is not a violation. However, any system that:

(A) does not monitor during this period; and

(B) then determines in the first twelve (12) months after the compliance date that it is not able to meet the Step 1 requirements in section 9(b)(2) of this rule and must therefore apply for alternate minimum TOC removal (Step 2) requirements;

is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed by section 9(b)(3) of this rule and is in violation.

(3) Systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date.

(4) For systems required to meet Step 1 TOC removals, if the value calculated under section 9(c)(1)(D) of this rule is less than one (1.00), the system:

(A) is in violation of the treatment technique requirements; and

(B) must notify the public ~~pursuant to 327 IAC 8-2.1-17(80)(a) and 327 IAC 8-2.1-17(80)(b),~~ **under 327 IAC 8-2.1-7 through 327 IAC 8-2.1-17,** in addition to reporting to the commissioner ~~pursuant to~~ **under** section 8 of this rule.

(Water Pollution Control Board; 327 IAC 8-2.5-7; filed May 1, 2003, 12:00 p.m.: 26 IR 2847)

SECTION 4. 327 IAC 8-2.5-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.5-8 Reporting and record keeping requirements; disinfectants and disinfection byproducts

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 8. (a) Systems required to sample:

(1) quarterly or more frequently shall report to the commissioner within ten (10) days after the end of each quarter in which samples were collected, notwithstanding the provisions of ~~327 IAC 8-2.1-7. Systems required to sample~~ **327 IAC 8-2-13; and**

(2) less frequently than quarterly report to the commissioner within ten (10) days after the end of each monitoring period in which samples were collected.

(b) For disinfection byproducts, systems must report the information specified in the following table:

IF YOU ARE A:	YOU MUST REPORT:
(1) System monitoring for TTHMs and HAA5 under the requirements of section 6(b) of this rule on a quarterly or more frequent basis:	(i) The number of samples taken during the last quarter. (ii) The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of all samples taken in the last quarter. (iv) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four (4) quarters. (v) Whether, based on section 7(b)(1) of this rule, the MCL was violated.
(2) System monitoring for TTHMs and HAA5 under the requirements of section 6(b) of this rule less frequently than quarterly (but at least annually):	(i) The number of samples taken during the last year. (ii) The location, date, and result of each sample taken during the last monitoring period. (iii) The arithmetic average of all samples taken over the last year. (iv) Whether, based on section 7(b)(1) of this rule, the MCL was violated.
(3) System monitoring for TTHMs and HAA5 under the requirements of section 6(b) of this rule less frequently than annually:	(i) The location, date, and result of the last sample taken. (ii) Whether, based on section 7(b)(1) of this rule, the MCL was violated.
(4) System monitoring for chlorite under the requirements of section 6(b) of this rule:	(i) The number of entry point samples taken each month for the last three (3) months. (ii) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter. (iii) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system. (iv) Whether, based on section 7(b)(3) of this rule, the MCL was violated, and in which month, and how many times it was violated each month.
(5) System monitoring for bromate under the requirements of section 6(b) of this rule:	(i) The number of samples taken during the last quarter. (ii) The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. (iv) Whether, based on section 7(b)(2) of this rule, the MCL was violated.

(c) For disinfectants, systems shall report the information specified in the following table:

IF YOU ARE A:	YOU MUST REPORT:
(1) System monitoring for chlorine or chloramines under the requirements of section 6(c) of this rule:	(i) The number of samples taken during each month of the last quarter. (ii) The monthly arithmetic average of all samples taken in each month for the last twelve (12) months. (iii) The arithmetic average of all monthly averages for the last twelve (12) months. (iv) Whether, based on section 7(c)(1) of this rule, the MRDL was violated.
(2) System monitoring for chlorine dioxide under the requirements of section 6(c) of this rule:	(i) The dates, results, and locations of samples taken during the last quarter. (ii) Whether, based on section 7(c)(2) of this rule, the MRDL was violated. (iii) Whether the MRDL was exceeded in any two (2) consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) For disinfection byproduct precursors and enhanced coagulation or enhanced softening, systems shall report the information specified in the following table:

IF YOU ARE A:	YOU MUST REPORT:
(1) System monitoring monthly or quarterly for TOC under the requirements of section 6(d) of this rule and required to meet the enhanced coagulation or enhanced softening requirements in section 9(b)(2) or 9(b)(3) of this rule:	(i) The number of paired (source water and treated water) samples taken during the last quarter. (ii) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter. (iii) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal. (iv) Calculations for determining compliance with the TOC percent removal requirements, as provided in section 9(c)(1) of this rule. (v) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in section 9(b) of this rule for the last four (4) quarters.
(2) System monitoring monthly or quarterly for TOC under the requirements of section 6(d) of this rule and meeting one (1) or more of the alternative compliance criteria in section 9(a)(2) or 9(a)(3) of this rule:	(i) The alternative compliance criterion that the system is using. (ii) The number of paired samples taken during the last quarter. (iii) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter. (iv) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in section 9(a)(2)(A) or 9(a)(2)(C) of this rule or of treated water TOC for systems meeting the criterion in section 9(a)(2)(B) of this rule. (v) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in ~~section 9(a)(2)(G)~~ **section 9(a)(2)(E)** of this rule or of treated water SUVA for systems meeting the criterion in ~~section 9(a)(2)(H)~~ **section 9(a)(2)(F)** of this rule. (vi) The running annual average of source water alkalinity for systems meeting the criterion in section 9(a)(2)(C) of this rule and of treated water alkalinity for systems meeting the criterion in section 9(a)(3)(A) of this rule. (vii) The running annual average for both TTHM and HAA5 for systems meeting the criterion in section 9(a)(2)(C) or ~~9(a)(2)(I)~~ **9(a)(2)(D)** of this rule. (viii) The running annual average of the amount of magnesium hardness removal (as $CaCO_3$, in mg/L) for systems meeting the criterion in section 9(a)(3)(B) of this rule. (ix) Whether the system is in compliance with the particular alternative compliance criterion in section 9(a)(2) or 9(a)(3) of this rule.

(Water Pollution Control Board; 327 IAC 8-2.5-8; filed May 1, 2003, 12:00 p.m.: 26 IR 2849)

SECTION 5. 327 IAC 8-2.5-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.5-9 Treatment techniques for control of disinfection byproducts precursors

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 9. (a) Applicability is as follows:

(1) Subpart H systems using conventional filtration treatment shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in subsection (b) unless the system meets at least one (1) of the alternative compliance criteria listed in subdivision (2) or (3).

(2) Subpart H systems using conventional filtration treatment may use one (1) or all of the following alternative compliance criteria to comply with this section ~~in lieu~~ **instead** of complying with subsection (b):

(A) The system's source water TOC level, measured according to section 5(d)(3) of this rule, is less than two and zero-tenths (2.0) milligrams per liter, calculated quarterly as a running annual average.

(B) The system's treated water TOC level, measured according to section 5(d)(3) of this rule, is less than two and zero-tenths (2.0) milligrams per liter, calculated quarterly as a running annual average.

(C) The system's source water TOC level, measured according to section 5(d)(3) of this rule, is less than four and zero-tenths (4.0) milligrams per liter, calculated quarterly as a running annual average and the following are met:

(i) The source water alkalinity, measured according to section 5(d)(1) of this rule, is greater than sixty (60) milligrams per liter (as $CaCO_3$), calculated quarterly as a running annual average.

(ii) Either of the following:

(AA) The TTHM and HAA5 running annual averages are no greater than forty-thousandths (0.040) milligram per liter and thirty-thousandths (0.030) milligram per liter, respectively. ~~or~~

(BB) ~~Prior to~~ **Before** the effective date for compliance in section 4(b) of this rule, the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in section 4(b) of this rule to use technologies that will limit the levels of TTHMs and HAA5 to ~~no~~ **not** more than forty-thousandths (0.040) milligram per liter and thirty-thousandths (0.030) milligram per liter, respectively. Systems shall submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the agency for approval not later than the effective date for compliance in section 4(b) of this rule. These technologies must be installed and operating not later than June 30, 2005.

(D) The TTHM and HAA5 running annual averages are ~~no~~ **not** greater than forty-thousandths (0.040) milligram per liter and thirty-thousandths (0.030) milligram per liter, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(E) The system's source water SUVA, ~~prior to~~ **before** any treatment and measured monthly according to section 5(d)(4) of this rule, is less than or equal to two and zero-tenths (2.0) liters per milligram meter, calculated quarterly as a running annual average.

(F) The system's finished water SUVA, measured monthly according to section 5(d)(4) of this rule, is less than or equal to two and zero-tenths (2.0) liters per milligram meter, calculated quarterly as a running annual average.

(3) Systems practicing enhanced softening that cannot achieve the TOC removals required by ~~subdivision~~ **subsection** (b)(2) may use the following alternative compliance criteria ~~in lieu~~ **instead** of complying with subsection (b):

(A) Softening that results in lowering the treated water alkalinity to less than sixty (60) milligrams per liter (as $CaCO_3$), measured monthly according to section 5(d)(1) of this rule and calculated quarterly as a running annual average.

(B) Softening that results in removing at least ten (10) milligrams per liter of magnesium hardness (as $CaCO_3$), measured monthly and calculated quarterly as an annual running average.

Systems shall comply with monitoring requirements in section 6(d) of this rule.

(b) Enhanced coagulation and enhanced softening performance requirements are as follows:

(1) Systems shall achieve the percent reduction of TOC specified in subdivision (2) between the source water and the combined filter effluent unless the commissioner approves a system's request for alternate minimum TOC removal (Step 2) requirements under subdivision (3).

(2) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with section 6(d) of this rule. Systems practicing softening are required to meet the Step 1 TOC reductions in the far right column (source water alkalinity greater than one hundred twenty (120) milligrams per liter) for the specified source water TOC:

Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Subpart H Systems Using Conventional Treatment[1, 2]

	Source-Water Alkalinity, mg/L as $CaCO_3$		
Source-Water TOC, mg/L	0-60 (percent)	>60-120 (percent)	>120[3] (percent)
>2.0-4.0	35.0%	25.0%	15.0%
>4.0-8.0	45.0%	35.0%	25.0%
>8.0	50.0%	40.0%	30.0%

[1]Systems meeting at least one (1) of the conditions in subsection

(a)(2) are not required to operate with enhanced coagulation.

[2]Softening systems meeting one (1) of the alternative compliance criteria in subsection (a)(3) are not required to operate with enhanced softening.

[3]Systems practicing softening shall meet the TOC removal requirements in this column.

(3) Subpart H conventional treatment systems that cannot achieve the Step 1 TOC removals required by subdivision (2) due to water quality parameters or operational constraints shall apply to the commissioner, within three (3) months of failure to achieve the TOC removals required by subdivision (2), for approval of alternative minimum TOC (Step 2) removal requirements submitted by the system as provided by subdivision (4). If the commissioner approves the alternative minimum TOC removal (Step 2) requirements, the commissioner may make those requirements retroactive for the purposes of determining compliance. Until the commissioner approves the alternate minimum TOC removal (Step 2) requirements, the system shall meet the Step 1 TOC removals contained in subdivision (2).

(4) Alternate minimum TOC removal (Step 2) requirements are as follows:

(A) Applications made to the commissioner by enhanced coagulation systems for approval of alternate minimum TOC removal (Step 2) requirements under subdivision (3) must include, at a minimum, results of bench-scale or pilot-scale testing conducted under clause (C). The submitted bench-scale or pilot-scale testing will be used to determine the alternate enhanced coagulation level.

(B) As used in this subdivision, "alternate enhanced coagulation level" means coagulation at a coagulant dose and pH as determined by the method described in ~~clauses~~ **clause** (A), **this clause, and clauses (C)** through (E) such that an incremental addition of ten (10) milligrams per liter of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to three-tenths (0.3) milligram per liter. The percent removal of TOC at this point on the TOC removal versus coagulant dose curve is defined as the minimum TOC removal required for the system. Once approved by the ~~agency,~~ **commissioner,** this minimum requirement supersedes the minimum TOC removal required by the table in subdivision (2). This requirement will be effective until the ~~agency~~ **commissioner** approves a new value based on the results of a new bench-scale and pilot-scale tests. Failure to achieve alternative minimum TOC removal levels is a violation of ~~National Primary Drinking Water Regulations.~~ **this subsection.**

(C) Bench-scale or pilot-scale testing of enhanced coagulation must be conducted by using representative water samples and adding ten (10) milligrams per liter increments of alum, or equivalent amounts of ferric salt, until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

Enhanced Coagulation Step 2 Target pH

Alkalinity (mg/L as $CaCO_3$)	Target pH
0-60	5.5
>60-120	6.3
>120-240	7.0
>240	7.5

(D) For waters with alkalinities of less than sixty (60) milligrams per liter for which the addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below five and five-tenths (5.5) before significant TOC removal occurs, the system shall add necessary chemicals to maintain the pH between five and three-tenths (5.3) and five and seven-tenths (5.7) in samples until the TOC removal of three-tenths (0.3) milligram per liter per ten (10) milligrams per liter alum added, or ~~equivalant~~ **equivalent** addition of iron coagulant, is reached.

(E) The system may operate at any coagulant dose or pH necessary, consistent with ~~other National Primary Drinking Water Regulations,~~ **the provisions of 327 IAC 8-2, 327 IAC 8-2.5, and 327 IAC 8-2.6,** to achieve the minimum TOC percent removal approved under subdivision (3).

(F) If the TOC removal is consistently less than three-tenths (0.3) milligram per liter of TOC per ten (10) milligrams per liter of incremental alum dose at all dosages of alum (or ~~equivalant~~ **equivalent** addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the commissioner for a waiver of enhanced coagulation requirements.

(c) Compliance calculations are required as follows:

(1) Subpart H systems other than those identified in subsection (a)(2) or (a)(3) shall comply with requirements contained in subsection (b)(2) or (b)(3). Systems shall calculate compliance quarterly, beginning after the system has collected twelve (12) months of data, by determining an annual average using the following method:

STEP 1: Calculate actual monthly TOC percent removal, which is equal to:

(1 - (treated water TOC/source water TOC)) × one hundred (100).

STEP 2: Calculate the required monthly TOC percent removal (from either the table in subsection (b)(2) or from subsection (b)(3)).

STEP 3: Divide the value determined under STEP 1 by the value determined under STEP 2.

STEP 4: Add together the quotients determined under STEP 3 for the last twelve (12) months and divide by twelve (12).

STEP 5: If the quotient calculated in STEP 4 is less than one and zero-hundredths (1.00), the system is not in compliance with the TOC percent removal requirements.

(2) Systems may use the following provisions ~~in lieu~~ **instead** of the calculations in subdivision (1) to determine compliance with TOC percent removal requirements:

(A) In any month that the system's treated or source water TOC level, measured according to section 5(d)(3) of this rule, is less than two and zero-tenths (2.0) milligrams per

liter, the system may assign a monthly value of one and zero-tenths (1.0) ~~(in lieu~~ **(instead** of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(B) In any month that a system practicing softening removes at least ten (10) milligrams per liter of magnesium hardness (as $CaCO_3$), the system may assign a monthly value of one and zero-tenths (1.0) ~~(in lieu~~ **(instead** of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(C) In any month that the system's source water SUVA, ~~prior to~~ **before** any treatment and measured according to section 5(d)(4) of this rule, is less than or equal to two and zero-tenths (2.0) liters per milligram meter, the system may assign a monthly value of one and zero-tenths (1.0) ~~(in lieu~~ **(instead** of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(D) In any month that the system's finished water SUVA, measured according to section 5(d)(4) of this rule, is less than or equal to two and zero-tenths (2.0) liters per milligram meter, the system may assign a monthly value of one and zero-tenths (1.0) ~~(in lieu~~ **(instead** of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(E) In any month that a system practicing enhanced softening lowers alkalinity below sixty (60) milligrams per liter (as $CaCO_3$), the system may assign a monthly value of one and zero-tenths (1.0) ~~(in lieu~~ **(instead** of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(3) Subpart H systems using conventional treatment may also comply with ~~the requirements of~~ this section by meeting the criteria in subsection (a)(2) or (a)(3).

(d) The commissioner identifies the following as treatment techniques for Subpart H systems **using conventional treatment** to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems:

~~(1) Conventional treatment.~~

~~(2)~~ **(1)** Enhanced coagulation.

~~(3)~~ **(2)** Enhanced softening.

(Water Pollution Control Board; 327 IAC 8-2.5-9; filed May 1, 2003, 12:00 p.m.: 26 IR 2851)

SECTION 6. 327 IAC 8-2.6-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-6 Filter backwash

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 6. All subpart H systems that employ conventional filtration or direct filtration treatment and recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall meet the following requirements:

(1) A system shall notify the commissioner in writing by December 8, 2003, if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification shall include, at a minimum, the following information:

(A) A plant schematic showing **the following:**

(i) The origin of all flows ~~which~~ **that** are recycled, including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes.

(ii) The hydraulic conveyance used to transport ~~the~~ **all flows that are recycled, including** spent filter backwash water, thickener supernatant, and liquids from dewatering processes. ~~and~~

(iii) The location where **all flows that are recycled, including** spent filter backwash water, thickener supernatant, and liquids from dewatering processes, are reintroduced back into the treatment plant.

(B) Typical recycle flow in gallons per minute.

(C) The highest observed plant flow experienced in the previous year in gallons per minute.

(D) Design flow for the treatment plant in gallons per minute.

(E) Commissioner-approved operating capacity for the plant where the commissioner has made such determinations.

(2) Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall return these flows:

(A) through the processes of a system's existing conventional or direct filtration system as defined in 327 IAC 8-2-1(14) and 327 IAC 8-2-1(18); or

(B) at an alternate location approved by the commissioner by June 8, 2004.

If capital improvements are required to modify the recycle location to meet the requirement in this subdivision, all capital improvements shall be completed no later than June 8, 2006.

(3) Subpart H systems shall collect and retain on file the following recycle flow information on forms provided by the department for review and evaluation by the commissioner beginning June 8, 2004:

(A) **A** copy of the recycle notification and information submitted to the commissioner under subdivision (1)(B) through (1)(E).

(B) **A** list of all recycle flows and the frequency with which they are returned.

(C) **The** average and maximum:

(i) backwash flow rate through the filters; and ~~the average and maximum~~

(ii) duration of the filter backwash process in minutes.

(D) **The** typical filter run length and a written summary of how **the** filter run length is determined.

(E) The type of treatment provided for the recycle flow.

(F) Data on the **following:**

(i) The physical dimensions of the equalization and treatment units.

(ii) The typical and maximum hydraulic loading rates.

(iii) The type of treatment chemicals used and average

dose and frequency of use. ~~and~~

(iv) The frequency at which solids are removed, if applicable.

(Water Pollution Control Board; 327 IAC 8-2.6-6; filed May 1, 2003, 12:00 p.m.: 26 IR 2859)

SECTION 7. 327 IAC 8-11-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-11-1 Water purification or treatment works; operation; reports

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-11-2; IC 13-18-11

Sec. 1. (a) All purification or treatment works producing water to be used or available for drinking purposes by the public shall be properly and efficiently operated under the supervision of a competent operator or superintendent.

(b) The commissioner may require the qualified operator or superintendent in responsible charge to attend training whenever, in the opinion of the commissioner, the training is deemed necessary for the protection of the public health.

~~(b) Weekly~~ **(c) Monthly** reports of operation of ~~such water purification or treatment works shall~~ **the following system classifications must** be submitted by the ~~owner or~~ operator to the commissioner: ~~Such~~

(1) WT2.
(2) WT3.
(3) WT4.
(4) WT5.
(5) Community public water systems purchasing water from WT4 or WT5 systems.
(6) Other systems determined by the commissioner to require monthly reporting.

(d) Reports of operation ~~shall~~ **required under subsection (c) must** be submitted on forms to be provided **or approved** by the commissioner and ~~shall~~ **must** include ~~such items of information as may be~~ **the following data, if applicable:**

(1) Daily quantities of the following:
(A) Water treated.
(B) Water distributed.
(C) Chemicals added to the water.
(2) Daily operation of treatment processes, including backwashing of filters by amount of filter run time and total gallons of backwash.
(3) Results of the following:
(A) All chemical, physical, and other tests performed for plant control.
(B) Disinfectant residual in the distribution system where disinfection is provided.
(4) Totals and averages of the above measurements where spaces are provided on the report form.
(5) Other data found to be necessary by the commissioner.

(e) The commissioner may reduce or modify the reporting requirements for any of the items in subsection (d).

(f) All monthly reports of operation must be:
(1) submitted to the commissioner:
(A) within the first ten (10) days following the month for which the report is prepared; and
(B) using the methods specified in 327 IAC 8-2-13(e); and
(2) retained by the water systems for five (5) years.

~~(c) The commissioner shall issue annually a certificate of qualification to each qualified operator or superintendent in responsible charge of producing or delivering a safe, potable drinking water and may request the same to attend short courses or schools, whenever in the opinion of the commissioner such training is deemed necessary for the protection of the public health.~~ *(Water Pollution Control Board; 327 IAC 8-11-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 718; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 8. 327 IAC 8-12-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-1 Definitions

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-11-2; IC 13-18-11

Sec. 1. In addition to the definitions contained in IC 13-11-2 and 327 IAC 1, the following definitions apply throughout this rule:

(1) "Acceptable experience" means employment in the actual hands-on operation of a water treatment plant or water distribution system. Experience in:

(A) water ~~w~~ treatment plant maintenance; ~~that directly relates to plant operation will be given a maximum of fifty percent (50%) credit for operational experience for those employed solely in this area. Experience in~~ **or**

(B) a water treatment plant laboratory;

that directly relates to plant operation will ~~also~~ be given a maximum of fifty percent (50%) credit for operational experience for those employed solely in ~~this~~ **that respective** area. Acceptable experience shall be obtained under the ~~supervision~~ **oversight** of a certified operator, **as a certified operator,** or by otherwise demonstrating to the commissioner that the applicant's experience meets the requirements described by this subdivision.

(2) "Adequate supervision" means that sufficient time is spent at a water treatment plant or water distribution system on a regular basis to assure that the facility is operated and maintained in a manner that protects public health.

~~(2)~~ **(3)** "Applicant" means a person seeking certification as a water treatment **plant** or water distribution system certified operator, whether or not the person is currently employed as an operator.

~~(3)~~ **(4)** "Application" means a written request for certification under this rule addressed to the commissioner.

~~(4)~~ **(5)** "Automated monitoring" means a continuous monitoring system that will cause an alarm, dialer, or pager to notify a certified operator in cases where a water treatment plant or water distribution system may fail during periods of normal operation.

~~(5)~~ **(6)** "Available" means that, based on water treatment **plant** or water distribution system size, complexity, and source water quality, a certified operator must be on site or able to be contacted if needed to initiate appropriate action in a timely manner.

~~(6)~~ **(7)** "Certificate" means an appropriate document **issued by the commissioner** containing the following information:

(A) Affirmation that the named person has fulfilled the requirements, including receiving a passing examination grade, necessary for the operation of the water treatment plant or water distribution system for which application was made.

(B) The water treatment plant or water distribution system classification that may be operated under the issued certificate.

(C) The date of issuance.

(D) An identification number unique to each certificate document.

~~(7)~~ **(8)** "Certification card" means a card issued **by the commissioner** to a person who has fulfilled the requirements to be a water treatment plant or **water** distribution system certified operator and ~~contains~~ **containing** the following information:

(A) The name and certificate number of the person.

(B) The classification of the water treatment plant or **water** distribution system that the named person may operate.

(C) An expiration date.

~~(8)~~ **(9)** "Certified operator" means a person who has:

(A) met the requirements of this rule;

(B) a valid certificate in a classification identified in section 2 of this rule for water treatment **plant** or water distribution **system** operation; and

(C) the ability to make decisions regarding the daily operational activities of a ~~a~~ public water system water treatment plant or water distribution system that will directly impact the quality or quantity of the drinking water.

~~(9)~~ **(10)** "Certified operator in responsible charge" means a person designated by the owner or governing body of a water treatment plant or water distribution system to be the certified operator who:

(A) has complete responsibility for the proper operation of a water treatment plant or water distribution system; and

(B) makes decisions regarding the daily operational activities of a public water system treatment plant or distribution system that will directly impact the quality or quantity of drinking water from community public water supply systems and nontransient noncommunity public water supply systems.

~~(10)~~ **(11)** "Commissioner" means the commissioner of the department. ~~of environmental management.~~

~~(11)~~ **(12)** "Contact hour" means a fifty (50) to sixty (60) minute instructional session involving an instructor or lecturer approved by the commissioner. Ten (10) contact hours equals one (1) continuing education unit (CEU) as defined by the National Task Force on the Continuing Education Unit.

(13) "Daily visit" means the time that:

(A) a certified operator in responsible charge; or

(B) another properly certified operator under the direction of the operator in responsible charge;

is present on site at the facility of responsibility during a twenty-four (24) hour period.

~~(12)~~ **(14)** "Operating shift" means that period of time during which operator decisions that affect public health are necessary for the proper operation of the system.

~~(13)~~ **(15)** "Plant operation" means the time of:

(A) actual production; or

(B) pumping to produce drinking water supply.

~~(14)~~ **(16)** "Population served" means the currently accepted population equivalent.

~~(15)~~ **(17)** "Training provider" means a person who conducts or presents a course training session approved under section 7.1 of this rule.

(Water Pollution Control Board; 327 IAC 8-12-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 719; filed Sep 19, 1990, 3:00 p.m.: 14 IR 259; filed Dec 12, 1994, 4:39 p.m.: 18 IR 1230; filed Nov 20, 2000, 4:11 p.m.: 24 IR 973)

SECTION 9. 327 IAC 8-12-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-2 Classification of water distribution systems and water treatment plants

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 2. (a) A water distribution system shall be classified in one (1) of three (3) classifications as follows:

(1) Class DSS (distribution system small) includes systems that:

(A) serve a population of less than three thousand three hundred ~~(3,300),~~ **one (3,301);** and

(B) have no components other than:

(i) pressure tanks; or

(ii) storage tanks.

Nontransient noncommunity public water systems serving a population less than five hundred one (501) utilizing no treatment other than ion exchange or inline filtration are DSS systems.

(2) Class DSM (distribution system medium) includes systems that meet one (1) of the following:

(A) Serve a population greater than ~~or equal to~~ three thousand three hundred ~~one (3,301)~~ **(3,300)** but less than ~~or equal to~~ ten thousand ~~(10,000)~~ **one (10,001)** people and have no mechanical means of movement of water other than one (1) of the following:

(i) Pressure tanks.

(ii) Storage tanks.

(iii) Booster pumps to storage tanks.

(B) **Serve a population of less than three thousand three hundred one (3,301) and** consist of **at least one (1) of** the following:

~~(i) Pump.~~

(i) Pumps, not including well pumps, before the entry point to the distribution system.

~~(ii) Storage tanks.~~

~~(iii)~~ **(ii)** Booster pumps to storage tanks.

(3) Class DSL (distribution system large) includes systems that meet one (1) of the following:

(A) Serve a population greater than ~~or equal to~~ ten thousand ~~one (10,001)~~ **(10,000)** people.

(B) **Serve a population of less than ten thousand one (10,001) and** consist of **at least one (1) of** the following:

~~(i) Storage tanks.~~

~~(ii)~~ **(i)** Booster pumps ~~to~~ **in** the distribution system **other than booster pumps to storage tanks.**

~~(iii)~~ **(ii)** Mechanical devices for movement of water beyond storage.

(b) A water treatment plant shall be classified in one (1) of six (6) classifications, based on population served and type of treatment, as follows:

(1) Class WT 1 includes systems that meet the following:

(A) Serve a population less than ~~or equal to~~ five hundred ~~(500)~~ **one (501)** people.

(B) Are a community water system.

~~(B)~~ **(C)** Acquire water from one (1) **or both** of the following:

(i) Ground water.

(ii) Purchase.

~~(C)~~ **(D)** Have one (1) **or both** of the following:

(i) Ion exchange softening process for cation removal.

(ii) Inline filtration device with no chemical treatment.

(2) Class WT 2 includes, ~~systems~~ with no population limitations, **systems** that meet the ~~following:~~ **requirements of clause (A) and either clause (B) or (C), or both, as follows:**

(A) Acquire water from one (1) **or more** of the following:

(i) Ground water.

(ii) Purchase.

(B) Utilize chemical feed to achieve one (1) of the following:

(i) Disinfection.

(ii) Fluoride standardization.

(iii) Water stabilization.

(C) Have one (1) or both of the following:

(i) An ion exchange softening process for cation removal if the population served is greater than five hundred (500) and less than three thousand three hundred one (3,301).

(ii) An inline filtration device if the population served is greater than five hundred (500) and less than three thousand three hundred one (3,301).

(3) Class WT 3 includes systems that meet the following:

(A) Acquire water from one (1) **or both** of the following:

(i) Ground water.

(ii) Purchase.

(B) Utilize chemical feed.

(C) Have one (1) **or more** of the following:

(i) Pressure or gravity filtration.

(ii) Ion exchange processes if the population served is greater than ~~five~~ **three thousand three** hundred ~~one (501).~~ **(3,300).**

(iii) Lime soda softening.

(iv) Reverse osmosis.

(v) Inline filtration if the population served is greater than three thousand three hundred (3,300).

(4) Class WT 4 includes systems that meet the following:

(A) Serve a population less than ~~or equal to~~ ten thousand ~~(10,000)~~ **one (10,001)** people.

(B) Acquire water from one (1) **or both** of the following:

(i) Surface water.

(ii) Ground water under the direct influence of surface water.

(5) Class WT 5 includes systems that meet the following:

(A) Serve a population greater than ten thousand ~~one (10,001)~~ **(10,000)** people.

(B) Acquire water from one (1) **or both** of the following:

(i) Surface water.

(ii) Ground water under the direct influence of surface water.

(6) Class WT 6 includes systems that utilize newly emerging treatment technology not commonly in use for drinking water treatment in Indiana, as determined by the commissioner.

(7) The commissioner may determine the classification of a system based on system complexity and operational requirements where necessary.

(Water Pollution Control Board; 327 IAC 8-12-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 719; filed Sep 19, 1990, 3:00 p.m.: 14 IR 259; filed Dec 12, 1994, 4:39 p.m.: 18 IR 1230; errata filed Mar 9, 1995, 4:15 p.m.: 18 IR 1836; filed Nov 20, 2000, 4:11 p.m.: 24 IR 974)

SECTION 10. 327 IAC 8-12-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-3 Qualifications of a certified operator

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-11-2; IC 13-18-11

Sec. 3. (a) In order to become a certified operator of a water treatment plant or a water distribution system, a person must **do the following:**

(1) Meet the minimum qualifications specified in subsection (b). ~~and~~

(2) Pass the certification examination required by the commissioner unless exempted by statute or rule.

(b) ~~Prior to~~ **Before** applying to take the water treatment plant or water distribution system operator certification examination given by the commissioner, a person must have the following

qualifications:

(1) The educational skills necessary to **do the following:**

(A) Make simple computations:

(i) with fractions and decimals; **and**

(ii) of multiplication and division.

(B) Read a linear scale.

(C) Calculate volumes of simple shapes.

~~(D) Make simple computations of multiplication and division.~~

~~(E)~~ **(D)** Keep records.

~~(F)~~ **(E)** Read and write the English language to the extent of:

(i) interpreting service manuals and work orders; and

(ii) submitting written reports.

~~(G)~~ **(F)** Understand basic principles of **the following:**

(i) Sanitation. ~~and~~

~~(H) understand basic principles of~~ **(ii)** Science.

(2) With the exception of an operator-in-training, experience acceptable to the commissioner in the field of water treatment or water distribution that **meets the following requirements:**

(A) Demonstrates the examination applicant's technical knowledge.

(B) Can be verified based on information from available sources, primarily the applicant's water treatment plant or water distribution system employer. ~~and~~

(C) Is the result of satisfactory accomplishment of work in accordance with the following:

(i) Measured from the date of employment of the applicant to the date of the next scheduled examination.

(ii) Received under the ~~supervision~~ **oversight** of a certified operator qualified to operate the same classification of **water** treatment plant or **water** distribution system as that of the applicant's certification application **except where one (1) of the following is used to meet the requirements for acceptable work experience:**

(AA) 327 IAC 8-12-3.2(b)(2)(C)(ii).
(BB) 327 IAC 8-12-3.2(b)(3)(D)(ii).
(CC) 327 IAC 8-12-3.2(b)(3)(D)(iii).
(DD) 327 IAC 8-12-3.2(b)(3)(D)(iv).
(EE) 327 IAC 8-12-3.2(c)(2)(D)(ii).
(FF) 327 IAC 8-12-3.2(c)(4)(D)(iii).
(GG) 327 IAC 8-12-3.2(c)(5)(D)(i)(BB).
(HH) 327 IAC 8-12-3.2(c)(5)(D)(iii).
(II) 327 IAC 8-12-3.4.
(JJ) 327 IAC 8-12-3.5.

Where acceptable work experience is gained under these provisions, oversight may be under an operator qualified to operate the water treatment plant or water distribution system where the experience was obtained. If the applicant holds a certification license for the classification of system where the experience is obtained, the applicant's manager may certify that the experience has been obtained.

(Water Pollution Control Board; 327 IAC 8-12-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 721; filed Sep 19, 1990, 3:00 p.m.: 14 IR 262; filed Dec 12, 1994, 4:39 p.m.: 18 IR 1232; errata filed Mar 9, 1995, 4:15 p.m.: 18 IR 1836; filed Nov 20, 2000, 4:11 p.m.: 24 IR 977)

SECTION 11. 327 IAC 8-12-3.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-3.2 Certified operator grades

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 3.2. (a) Grade operator-in-training (O.I.T.) is available under the following guidelines:

(1) To a person meeting the following:

(A) Currently employed at a public water system with facilities classified as a Class WT 3, ~~Class~~ WT 4, or ~~Class~~ WT 5 water treatment plant or a **Class** DSL water distribution system.

(B) Has fulfilled the qualifications of section 3(a)(2) and 3(b)(1) of this rule.

(2) In accordance with the following:

(A) Until the O.I.T. meets the experience requirement needed for the classification of treatment plant or distribution system where the O.I.T. is accumulating work experience.

(B) Operating work must be accomplished under the supervision of a certified operator in responsible charge who must verify to the commissioner the satisfactory achievement of acceptable experience by the O.I.T.

(C) An O.I.T. may not **do any of the following:**

(i) Serve as a certified operator in responsible charge.

(ii) Transfer an O.I.T. certification to a water treatment plant or **water** distribution system with a public water system identification number (PWSID) different than the PWSID for which the certification was issued.

(iii) Hold two (2) **water** treatment plant or **water** distribution system O.I.T. certifications concurrently. ~~or~~

(iv) Renew the O.I.T. certification.

(b) A water distribution system certified operator may possess a valid certification in one (1) or more of the following three (3) grades:

(1) Grade DSS is a certified operator qualified to operate a Class DSS water distribution system after having fulfilled the following requirements:

(A) Possess a high school diploma or its equivalent.

(B) Meet the qualifications of section 3 of this rule.

(C) Attain a minimum of one (1) year of acceptable work experience in the operation of a Class DSS water distribution system.

(2) Grade DSM is a certified operator qualified to operate a Class DSS and Class DSM water distribution system after having fulfilled the following requirements:

(A) Possess a high school diploma or its equivalent.

(B) Meet the qualifications of section 3 of this rule.

(C) Attain one (1) of the following acceptable work experience requirements:

(i) One (1) year in the operation of a Class DSM water distribution system.

(ii) Two (2) years in the operation of a Class DSS water distribution system.

(3) Grade DSL is a certified operator qualified to operate a Class DSS, Class DSM, and Class DSL water distribution system after having fulfilled the following requirements:

(A) Possess a high school diploma or its equivalent.

(B) Meet the qualifications of section 3 of this rule.

(C) Must be able to **do the following:**

(i) Maintain inventories.

(ii) Order supplies and equipment. ~~and~~

(iii) Interpret chemical and bacteriological sample reports.

(D) Attain one (1) of the following acceptable work experience requirements:

(i) One (1) year in the operation of a Class DSL water distribution system.

(ii) Three (3) years in the operation of a Class DSM water distribution system.

(iii) Five (5) years in the operation of a Class DSS water distribution system.

(iv) An acceptable number of years of experience approved by the commissioner if gained in operation of a combination of the various classifications of water distribution systems.

(c) A water treatment plant certified operator may possess a valid certification in one (1) or more of the following ~~five (5)~~ **six (6)** grades:

(1) Grade WT 1 is a certified operator qualified to operate a Class WT 1 water treatment plant **or a Class DSS water distribution system at a nontransient noncommunity water system serving five hundred (500) or fewer individuals or a community water system serving one hundred (100) or fewer individuals** after having fulfilled the following requirements:

(A) Possess a high school diploma or its equivalent.

(B) Meet the qualifications of section 3 of this rule.

(C) Must be able to **do the following:**

(i) Maintain inventories.

(ii) Order supplies and equipment. ~~and~~

(iii) Interpret chemical and bacteriological sample reports.

(D) Attain a minimum of one (1) year of acceptable work experience in the operation of a Class WT 1 water treatment plant.

(2) Grade WT 2 is a certified operator qualified to operate a Class WT 1 and a Class WT 2 water treatment plant **and a Class DSS water distribution system at a nontransient noncommunity water system serving five hundred (500) or fewer individuals or a community water system serving one hundred (100) or fewer individuals** after having fulfilled the following requirements:

(A) Possess a high school diploma or its equivalent.

(B) Meet the qualifications of section 3 of this rule.

(C) Must be able to **do the following:**

(i) Maintain inventories.

(ii) Order supplies and equipment. ~~and~~

(iii) Interpret chemical and bacteriological sample reports.

(D) Attain one (1) of the following acceptable work experience requirements:

(i) One (1) year in the operation of a Class WT 2 water treatment plant.

(ii) Two (2) years in the operation of a Class WT 1 water treatment plant.

(3) Grade WT 3 is a certified operator qualified to operate a Class WT 1, Class WT 2, and Class WT 3 water treatment plant **and a Class DSS water distribution system at a nontransient noncommunity water system serving five hundred (500) or fewer individuals or a community water system serving one hundred (100) or fewer individuals** after having fulfilled the following requirements:

(A) Possess a high school diploma or its equivalent.

(B) Meet the qualifications of section 3 of this rule.

(C) Must be able to **do the following:**

(i) Maintain inventories.

(ii) Order supplies and equipment. ~~and~~

(iii) Interpret chemical and bacteriological sample reports.

(D) Attain the following acceptable work experience at a minimum:

(i) Two (2) years in the operation of a Class WT 3 water treatment plant.

(ii) Successful completion of educational work at college level in:

(AA) engineering;

(BB) chemistry; or

(CC) science;

related to water treatment may be substituted for work experience required according to item (i) at the ratio of four (4) semesters or six (6) quarters of schooling for a maximum substitution of one (1) year of experience.

(4) Grade WT 4 is a certified operator qualified to operate a Class WT 1, Class WT 2, and Class WT 4 water treatment plant **and a Class DSS water distribution system at a nontransient noncommunity water system serving five hundred (500) or fewer individuals or a community water system serving one hundred (100) or fewer individuals** after having fulfilled the following requirements:

(A) Possess a high school diploma or its equivalent.

(B) Meet the qualifications of section 3 of this rule.

(C) Must be able to **do the following:**

(i) Maintain inventories.

(ii) Order supplies and equipment. ~~and~~

(iii) Interpret chemical and bacteriological sample reports.

(D) Attain the following acceptable work experience at a minimum:

(i) Two (2) years in the operation of a Class WT 4 water treatment plant.

(ii) Successful completion of educational work at college level in:

(AA) engineering;

(BB) chemistry; or
(CC) science;
related to water treatment may be substituted for work experience required according to item (i) at the ratio of four (4) semesters or six (6) quarters of schooling for a maximum substitution of one (1) year of experience.
(iii) Two (2) years in the operation of a Class WT 3 water treatment plant may substitute for a maximum of one (1) year of experience required according to item (i).

(5) Grade WT 5 is a certified operator qualified to operate a Class WT 1, Class WT 2, Class WT 4, and Class WT 5 water treatment plant **and a Class DSS water distribution system at a nontransient noncommunity water system serving five hundred (500) or fewer individuals or a community water system serving one hundred (100) or fewer individuals** after having fulfilled the following requirements:
(A) Possess a high school diploma or its equivalent.
(B) Meet the qualifications of section 3 of this rule.
(C) Must have the ability to **do the following:**
(i) Use conversion factors.
(ii) Solve simple mathematical equations.
(iii) Understand **the following:**
(AA) Simple chemical laboratory equipment.
~~(iv)~~ ~~understand~~ **(BB)** The bacteriological procedures used in water supply work.
~~(v)~~ **(iv)** Maintain inventories. ~~and~~
~~(vi)~~ **(v)** Order supplies and equipment.
(D) Attain the following acceptable work experience at a minimum:
(i) One (1) of the following:
(AA) Three (3) years in the operation of a Class WT 5 water treatment plant.
(BB) Five (5) years in the operation of a Class WT 4 water treatment plant.
(ii) Successful completion of educational work at college level in:
(AA) engineering;
(BB) chemistry; or
(CC) science;
related to water treatment may be substituted for work experience required according to item (i) at the ratio of four (4) semesters or six (6) quarters of schooling for one (1) year of experience, up to a maximum of two (2) years of experience.
(iii) Two (2) years in the operation of a WT 3 water treatment plant may be substituted for one (1) year of experience required according to item (i) up to a maximum substitution of two (2) years experience.

(6) Grade WT 6 is a certified operator qualified to operate a Class WT 6 water treatment plant that requires operator qualifications determined by the commissioner on an individual plant basis in response to the specialized nature of the water treatment plant.

(d) An applicant for water treatment plant or water distribution system operator certification may submit proof to the commissioner to demonstrate the achievement of an equivalent level of acceptable **training or** work experience for that required by the following subsections:
(1) (b)(1)(C).
(2) (b)(2)(C).
(3) (b)(3)(D).
(4) (c)(1)(D).
(5) (c)(2)(D).
(6) (c)(3)(D).
(7) (c)(4)(D).
(8) (c)(5)(D).

(e) A Grade WT 3, Grade WT 4, and Grade WT 5 operator is qualified to apply for the appropriate wastewater treatment **plant** certification according to 327 IAC 5-22 to treat wastewater from a water treatment plant provided the operator is certified to operate that classification of water treatment plant.
(Water Pollution Control Board; 327 IAC 8-12-3.2; filed Nov 20, 2000, 4:11 p.m.: 24 IR 980)

SECTION 12. 327 IAC 8-12-3.4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-3.4 Grandparenting
Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-10.5; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 3.4. (a) For ~~the~~ purposes of this rule, grandparenting is the process through which the commissioner may issue operator certification to a person who has been working at a water treatment plant or water distribution system that, ~~prior to~~ **before** the effective date of this rule, was not required to be under the supervision of a certified operator. An operator certificate to be conferred through grandparenting may be issued if:
(1) the owner or governing body meets the criterion of subsection (b); and
(2) the recipient of ~~such~~ **the** certificate ~~must abide~~ **abides** by the requirements of subsection (d).

(b) The commissioner may issue an operator certification in the operator grade appropriate to the classification of water treatment plant or water distribution system where the recipient has been an employee acting in the capacity of an operator making process control decisions that affect the quality or quantity of water from the treatment plant or distribution system if the owner or governing body submits an application to the commissioner before September 1, 2002, requesting certification of each person intended to be designated as one (1) of the facility's operators in responsible charge.

(c) A certification conferred under grandparenting shall be **as follows:**
(1) Valid only at the site where the person receiving the grandparent certification gained operator experience.
(2) Valid for three (3) years during which time the operator

must **do the following:**

(A) Fulfill the continuing education requirements for the grade of operator certification that has been conferred through grandparenting as listed in section 7.5 of this rule in order to be eligible for certification renewal according to section 7(e)(3) of this rule. ~~and~~

(B) Successfully complete an operator training course specified by the commissioner. ~~and~~

(3) Invalid if the classification of the water treatment plant or water distribution system changes to one (1) requiring a certified operator with more extensive education or experience qualifications, such as may be based on **any of the following:**

(A) Increased capacity.

(B) An increase in population served.

(C) A basic change in the method of water treatment. ~~or~~

(D) Another change in conditions that causes a more difficult or complex operation.

(4) The commissioner may allow a grandparented operator to continue operation of a system where the classification has changed under subdivision (3) if the operator demonstrates to the commissioner that the facility will be properly operated. For a grandparented operator to continue operation of a system where the classification has changed under subdivision (3), the request must be made by the owner of the public water system.

(d) If an operator certified under grandparenting according to this section:

(1) fails to meet the continuing education requirements of section 7.5 of this rule within the required time according to subsection (c)(2); or

(2) goes to work at water treatment plant or water distribution system other than the one for which the grandparent certification was conferred;

then the grandparent certification is voided and the operator must become certified according to the requirements of this rule. *(Water Pollution Control Board; 327 IAC 8-12-3.4; filed Nov 20, 2000, 4:11 p.m.: 24 IR 982)*

SECTION 13. 327 IAC 8-12-3.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-12-3.5 Site-specific operator

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 3.5. (a) Operators of nontransient noncommunity public water systems of the following facility classifications may be granted SSO certifications:

(1) Class DSS systems.

(2) Class WT1 systems.

(3) Noncommunity public water systems of other facility classifications may be granted SSO certifications for their classifications if the commissioner determines that the SSO applicant will adequately perform the tasks necessary for proper operation of the system.

(b) Operators of community public water systems serving one hundred (100) or fewer people with the following facility classifications may be granted SSO certifications:

(1) Class DSS systems.

(2) Class WT1 systems.

(c) The following requirements must be met in order for a site-specific operator (SSO) certification to be granted for a public water system:

(1) The owner of the system shall designate a person to be in responsible charge of the system.

(2) The designee (applicant) must be an employee or member of the public water system.

(3) Each applicant shall do the following:

(A) Demonstrate proficiency to the commissioner in accordance with section 4.5 of this rule.

(B) Meet the requirements of section 3(b)(1) of this rule.

(C) Be able to do the following:

(i) Maintain inventories.

(ii) Order supplies.

(iii) Interpret chemical and bacteriological sample reports.

(4) A person may hold only one (1) SSO certification at a time unless the commissioner has determined that the SSO operator can maintain each system for which an SSO certification is requested.

(d) An SSO certification is valid as follows:

(1) Only at the site for which the SSO certification is granted.

(2) For three (3) years, during which time the operator shall fulfill the continuing education requirements for the SSO certification as listed in section 7.5 of this rule in order to be eligible for certification renewal in accordance with section 7(e)(3) of this rule.

(e) An SSO certification will be invalid if the classification of water treatment plant or water distribution system changes to one (1) requiring a certified operator with more extensive education or experience, such as any of the following:

(1) Increased capacity.

(2) An increase in population served.

(3) A basic change in the method of water treatment.

(4) Another change in conditions that causes a more difficult or complex operation.

(f) If a person granted an SSO certification fails to meet the continuing education requirements of section 7.5 of this rule within the required time set forth in subsection (d)(2), then:

(1) the SSO certification is voided; and

(2) the operator must become certified according to the requirements of this rule.

(g) The commissioner may revoke an SSO certification due to failure to do any of the following:

(1) Conduct any of the following:

(A) Monitoring and reporting to meet the requirements of 327 IAC 8-2.

(B) Reporting to meet the requirements of 327 IAC 8-2.1.

(C) Monitoring and reporting to meet the requirements of 327 IAC 8-2.5.

(2) Operate and maintain the system in a manner that protects human health.

(Water Pollution Control Board; 327 IAC 8-12-3.5)

SECTION 14. 327 IAC 8-12-3.6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-3.6 Certified operator in responsible charge

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 3.6. (a) A certified operator may be in responsible charge of more than one (1) water treatment plant or water distribution system if the following conditions are met:

(1) The certified operator will be able to provide adequate supervision to all units involved.

(2) ~~Prior to~~ **Before** undertaking multiple operator positions of responsible charge, a letter signed by the certified operator is submitted to the owner or governing body of each water treatment plant and water distribution system to be under the responsible charge of the certified operator providing the following information:

(A) The name and location of ~~each~~ each water treatment plant and water distribution system to be under the responsible charge of the certified operator.

(B) The number of hours per week the certified operator shall work at each water treatment plant and water distribution system.

(b) ~~As used in this section, "adequate supervision" means that sufficient time is spent at a water treatment plant or water distribution system on a regular basis to assure that the certified operator is knowledgeable of the actual operations and that test reports and results are representative of the actual operational conditions. A daily visit is the time that a certified operator is present on site at the facility of responsibility during a twenty-four (24) hour period; a certified operator shall be credited for no more than one (1) daily visit within a twenty-four (24) hour period.~~ The following establishes minimum criteria regarding adequate supervision at each classification of water distribution system and water treatment plant:

(1) DSS must **do the following:**

(A) Be monitored daily by a dependable person or automated system. ~~and~~

(B) **Meet the following conditions based on system size and type:**

(i) A community water system must have a certified operator on site for a minimum of two (2) daily visits every week.

(ii) A nontransient noncommunity water system serving greater than five hundred (500) individuals must have a certified operator on site for a minimum of one (1) daily visit every week.

(iii) A nontransient noncommunity water system serving five hundred (500) or fewer individuals must have a certified operator on site for a minimum of one (1) daily site visit every two (2) weeks.

(2) DSM must **do the following:**

(A) Be monitored daily by a dependable person or automated system. ~~and~~

(B) Have a certified operator on site for a minimum of three (3) daily visits every week.

(3) DSL must **do the following:**

(A) Be monitored daily by a dependable person or automated system. ~~and~~

(B) Have a certified operator on site for a minimum of five (5) daily visits every week.

(4) WT 1 must **do the following:**

(A) Be monitored daily by a dependable person or automated system. ~~and~~

(B) Have a certified operator on site for a minimum of three (3) daily visits every week.

(5) WT 2 must **do the following:**

(A) Be monitored daily by a dependable person or automated system. ~~and~~

(B) Have a certified operator on site for a minimum of five (5) daily visits every week.

(6) WT 3 must **do the following:**

(A) Be monitored daily by a dependable person or automated system. ~~and~~

(B) Have a certified operator on site for a minimum of five (5) daily visits every week.

(7) WT 4 must have a certified operator on site during water treatment plant operation unless the plant is equipped with an automated system approved by the commissioner.

(8) WT 5 must have a certified operator on site during water treatment plant operation unless the plant is equipped with an automated system approved by the commissioner.

(c) **When requested by** the commissioner, ~~may request~~ **the certified operator shall provide** written submission documenting the following:

(1) The name, location, and classification of each water treatment plant and water distribution system under the responsible charge of a certified operator.

(2) The amount of time that a certified operator in responsible charge spends at a facility of responsibility identified according to subdivision (1).

(d) The commissioner shall evaluate information required by this section and any other information pertinent to a water treatment plant or water distribution system under the supervision of a certified operator in responsible charge ~~of multiple facilities~~ and may determine the following:

(1) The time ~~provided for supervision~~ **spent on site during a daily visit** is inadequate **for the duties required to properly operate the system in compliance with 327 IAC 8.**

(2) An amount of time that the certified operator in responsible charge shall be required to spend in the operation of each water treatment plant or water distribution system **where the operator is in charge of more than one (1) system.**

(3) A reduction of the number of water treatment plants or water distribution systems over which the certified operator may have responsible charge.

(4) ~~A reduction of~~ The number of daily **site** visits ~~to be~~ required **under subsection (b)(1) through (b)(6) may be modified** by the ~~certified operator.~~ **commissioner on a case-by-case basis.**

(Water Pollution Control Board; 327 IAC 8-12-3.6; filed Nov 20, 2000, 4:11 p.m.: 24 IR 982)

SECTION 15. 327 IAC 8-12-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-4 Examination of applicants to become a certified operator of a water treatment plant or water distribution system

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 4. (a) A standardized examination prepared to reflect the duties and responsibilities required of each grade of water treatment plant and water distribution system certified operator shall be **as follows:**

(1) Used to test knowledge, ability, and judgment of an applicant to become a water treatment plant or water distribution system certified operator.

(2) Conducted at least annually. ~~and~~

(3) Held at places and times established by the commissioner:

(A) with at least sixty (60) days advanced announcement; and

(B) except in such cases as may be declared necessary exceptions by the commissioner.

(b) A person wishing to be examined for water treatment plant or water distribution system certification shall fulfill the following requirements:

(1) Complete an application on a form approved by the commissioner that:

(A) contains true and accurate information to the best of the applicant's knowledge; and

(B) is free of omissions and misrepresentations, either of which may result in rejection of the application or revocation of any certificate previously granted.

(2) Submit a completed application, with the necessary fee, to the commissioner **postmarked** not later than forty-five (45) days preceding the date of the examination.

(c) The commissioner shall **do the following:**

(1) Review an application and supporting documents concerning the eligibility of an applicant for water treatment plant or water distribution system certification. ~~and~~

(2) Issue a written notification in the form of an admission slip, providing the time and place of the examination, to be presented by an applicant deemed eligible for examination.

(d) A person who has been notified and scheduled to take an examination:

(1) may submit a written request to the commissioner for a postponement to take the examination one (1) offering later than the examination granted by the commissioner if:

(A) the postponement:

(i) for a nonemergency reason is requested ~~no~~ **not** later than fourteen (14) days ~~prior to~~ **before** the examination date noticed to the applicant under subsection (c)(2); **and**

~~(B) the postponement~~ **(ii)** request for an emergency reason is submitted as soon as conditions of the emergency warrant; **and**

~~(C)~~ **(B)** the applicant:

(i) provides the commissioner an explicit description of extenuating circumstances necessitating the requested postponement; and

~~(D) the applicant~~ **(ii)** understands that only one (1) postponement shall be allowed; or

(2) will be considered to have failed that examination if ~~one (1) of the following occurs:~~ **the person:**

(A) ~~The person~~ does not attend the examination and has not requested a postponement according to subdivision (1); **or**

(B) ~~The person~~ is caught cheating on an examination, an occurrence that will make an applicant ineligible to take any operator certification examination for a period of two (2) years following the examination date of the incidence of cheating.

(e) Completed examinations shall be managed by the commissioner ~~according to the following:~~ **as follows:**

(1) Graded in a manner prescribed by the commissioner with a minimum result of seventy percent (70%) needed in order to pass the examination.

(2) The commissioner shall notify an applicant of the examination result **as follows:**

(A) In writing. ~~and~~

(B) ~~no~~ **Not** later than two (2) months after the date of the examination.

(3) Examination papers shall be retained by the commissioner with an opportunity afforded to an applicant notified of having failed the examination for review of the graded examination until a date ninety (90) days ~~prior to~~ **before** the next scheduled examination if the applicant submits the following to the commissioner:

(A) A written request for review of the graded examination.

(B) A statement affirming the applicant's understanding that examination review does not include the right to copy, by any means, **the following:**

(i) The examination. ~~or~~

(ii) Any portion of ~~it.~~ **the examination.**

(f) A person previously certified as a water treatment plant or water distribution system operator under this rule but who has failed to meet the renewal requirements **within a grace period of one (1) year** according to section ~~7(c)(3)~~ **7(e)(4)** of this rule must

~~(1)~~ retake an examination. ~~and~~

~~(2) meet the renewal requirements of section 7(c)(3) of this rule, including an amount of continuing education equivalent to that required for one (1) renewal period, as specified in section 7.5 of this rule;~~

~~within a grace period of one (1) year.~~ *(Water Pollution Control Board; 327 IAC 8-12-4; filed Sep 24, 1987, 3:00 p.m.: 11 IR 723; filed Sep 19, 1990, 3:00 p.m.: 14 IR 265; filed Dec 12, 1994, 4:39 p.m.: 18 IR 1235; filed Nov 20, 2000, 4:11 p.m.: 24 IR 984)*

SECTION 16. 327 IAC 8-12-4.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-12-4.5 Demonstration of proficiency for applicants to become a site-specific operator

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 4.5. (a) A person may become certified as a site-specific operator (SSO) by a demonstration of proficiency:

(1) through an examination;

(2) based on completion of an approved training course; or

(3) through another method approved by the commissioner.

(b) A standardized examination prepared to reflect the duties and responsibilities required of each SSO water treatment plant and water distribution system certified operator shall be as follows:

(1) Conducted at least annually.

(2) Held at places and times established by the commissioner.

(c) A person wishing to apply for water treatment plant or water distribution system SSO certification shall fulfill the following requirements:

(1) Complete an application on a form approved by the commissioner that:

(A) contains true and accurate information to the best of the applicant's knowledge; and

(B) is free of omissions and misrepresentations, either of which may result in rejection of the application or revocation of any certificate previously granted.

(2) Submit the following:

(A) A completed application, with the necessary fee, to the commissioner.

(B) Any additional information requested by the commissioner.

(Water Pollution Control Board; 327 IAC 8-12-4.5)

SECTION 17. 327 IAC 8-12-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-6 Certification; reciprocity; provisional certificate

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-18-11-9

Sec. 6. (a) The commissioner shall issue a certificate designating competency in the appropriate certified operator's grade to each person who makes proper application if the applicant:

(1) meets the necessary requirements of education and experience; and

(2) successfully completes a grade appropriate examination.

Upon successful completion of examination according to section 4 of this rule, the commissioner shall issue a certification in the certified operator grade in which the applicant was examined.

(b) The commissioner may issue a certificate by reciprocity as outlined in IC 13-18-11-9 if the following conditions are met:

(1) A person seeking reciprocal certification submits an application for such a certificate that includes the following:

(A) Proof of current certification.

(B) Grade of the applicant.

(2) A person from another state seeking a certificate by reciprocity earns the number of continuing education contact hours for all future renewal periods, in the time period required by section 7.5(a) of this rule, though no continuing education contact hours shall be required at the time of conferring the reciprocal certification.

(c) The commissioner may issue a provisional water treatment plant or water distribution operator's certificate if the following occur:

(1) The governing body or owner of a water treatment plant or water distribution system submits a written request specifying the existence of the vacancy and a reason necessitating the provisional certification, including one (1) of the following:

(A) To fill a vacancy created by death.

(B) Resignation of the certified operator in responsible charge.

(C) Extended illness of the certified operator in responsible charge.

(D) A justifiable cause due to ~~unforseen~~ **unforeseen** circumstances beyond the control of the governing body or owner that leaves the treatment plant or distribution system without a certified operator.

(2) The written request required by subdivision (1) provides the name, education, and experience of the person for whom the provisional certificate is requested.

(3) The provisional certificate nominee named under subdivision (2):

(A) submits, simultaneously with the request submitted under subdivision (1), an application as required by section 4(b) of this rule requesting examination and certification; **and**

~~(4) The provisional certificate nominee named under subdivision (2)~~ **(B)** is eligible at the time of the request submitted under subdivision (1) for the next scheduled certification examination.

(d) A provisional certificate shall be **as follows:**

(1) Issued by the commissioner in the form of a letter that specifies the conditions of the certification. ~~and~~

(2) Valid for ~~the shorter~~ **one (1)** of the following lengths of time **as determined by the commissioner:**

(A) The period between the:

(i) date of application; and ~~the~~

(ii) end of the thirty (30) day grading period following the next examination that is available to the provisional certificate nominee.

(B) One (1) year.

(C) Another time period designated by the commissioner.

(e) The commissioner may also issue a provisional water treatment plant or water distribution operator's certificate if the following occur:

(1) The classification of a treatment plant or water distribution system changes due to the following:

(A) Installation of treatment to meet a new requirement of the Safe Drinking Water Act (42 U.S.C. 300f and 42 U.S.C. 300j-26) or 327 IAC 8.

(B) An increase in the population served that:

(i) is not the result of consolidation of one (1) or more public water systems; and

(ii) is less than ten percent (10%) of population previously served.

(2) The written request required by subdivision (1)(A) provides the name, education, and experience of the person for whom the provisional certificate is requested.

(3) The provisional certificate nominee named under subdivision (1)(B) submits, simultaneously with the request submitted under subdivision (1)(A), an application as required by section 4(b) of this rule requesting examination and certification.

(f) The commissioner may waive the hands-on experience requirements for application for the examination for the new treatment classification for the provisional certificate nominee.

(g) A provisional certificate must be as follows:

(1) Issued by the commissioner in the form of a letter that specifies the conditions of the certification.

(2) Valid for one (1) of the following lengths of time as determined by the commissioner:

(A) The period between the:

(i) date of application; and

(ii) end of the thirty (30) day grading period following the next examination that is available to the provisional certificate nominee.

(B) One (1) year.

(C) Another time period designated by the commissioner.

(3) Granted only for continued operation of a system where the classification has changed under subsection (e) if the operator demonstrates to the commissioner that the facility will be properly operated.

(Water Pollution Control Board; 327 IAC 8-12-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 724; filed Sep 19, 1990, 3:00 p.m.: 14 IR 266; filed Dec 12, 1994, 4:39 p.m.: 18 IR 1236; filed Nov 20, 2000, 4:11 p.m.: 24 IR 985)

SECTION 18. 327 IAC 8-12-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-7 Certificates and certification cards; renewal; duplicates

Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-13
Affected: IC 13-18-11-6.5

Sec. 7. (a) A water treatment plant and water distribution system operator's certificate shall **be as follows:**

(1) Be issued after an applicant's successful completion of the grade appropriate examination.

(2) Specify **the following:**

(A) The month and year that the applicant qualified. ~~and~~

(B) The issuance date of the certificate.

(3) Be permanent in nature but will be effective only when validated by a current certification card. ~~and~~

(4) Not be valid if obtained:

(A) through fraud **or** deceit; or

(B) by the submission of inaccurate data on the application.

(b) A water treatment plant or water distribution system certified operator must **do the following:**

(1) Provide permanent and visible display of his or her certificate at the water treatment plant or water distribution system office. ~~and~~

(2) Obtain a duplicate certificate to display in the office of each water treatment plant and water distribution system supervised if the certified operator supervises more than one (1) water treatment plant or water distribution system.

(c) A certification card shall **be as follows:**

(1) Be issued **as follows:**

(A) Simultaneously with the certificate.

~~(2) be issued~~ **(B)** For a time period of ~~no~~ **not** more than thirty-six (36) months. ~~and~~

~~(3)~~ **(2)** Expire on the last day of June nearest the end of the triennial period following issuance.

(d) A water treatment plant or water distribution system certified operator needing a replacement or duplicate certificate ~~must~~ or card **must** submit a written request to the commissioner that includes the following:

(1) The following information:

(A) The grade of the water treatment plant or water distribution system certified operator.

(B) The name and classification of the water treatment plant or water distribution system to be operated.
(C) The date of issuance of the original certificate if known.
(D) The certificate number.
(2) A fee specified according to section 5(a)(4) or 5(a)(5) of this rule.

(e) The commissioner shall accomplish the following:
(1) Issue to each certified operator of a water treatment plant or water distribution system a renewal notification stating the following:
(A) The expiration date of the certified operator's certification card.
(B) The amount of the fee required for certification card renewal.
(2) Mail certification card renewal notifications **as follows:**
(A) At least thirty (30) days ~~prior to~~ **before** expiration of the certification card. ~~and~~
(B) To the last known address filed with the commissioner.
(3) Renew a certification card if:
(A) the continuing education requirements of section 7.5 of this rule are met;
(B) a renewal fee described in section 5(a)(3) of this rule is submitted to the commissioner on or before the first day of July of the triennial period for which a certification card is to be issued; and
(C) the notice is signed and returned by the certified operator to the commissioner.
(4) Reinstate certification if the operator **does the following:**
(A) Submits payment of **the following:**
(i) Any arrearage of fees.
~~(B) submits payment of~~ **(ii)** The current renewal fee.
~~(C) passes the grade appropriate examination;~~
~~(D)~~ **(B)** Fulfills arrearage of continuing education credit requirements. ~~and~~
~~(E)~~ **(C)** Is current in meeting continuing education credit requirements.
(5) Deny renewal of a certification card that is not renewed within the time limit established in section 7.5(a) of this rule and ~~IC 13-18-11-6(c)~~ **IC 13-18-11-6.5(c)** unless the operator ~~pursues reinstatement through reapplication~~ **reapplies** and ~~reexamination~~ **retakes the examination** following the requirements of section 4 of this rule.

(Water Pollution Control Board; 327 IAC 8-12-7; filed Sep 24, 1987, 3:00 p.m.: 11 IR 724; filed Sep 19, 1990, 3:00 p.m.: 14 IR 267; filed Dec 12, 1994, 4:39 p.m.: 18 IR 1236; filed Nov 20, 2000, 4:11 p.m.: 24 IR 986)

SECTION 19. 327 IAC 8-12-7.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-12-7.5 Continuing education requirements
Authority: IC 13-14-8; IC 13-18-11-1.5; IC 13-18-11-6.5; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 7.5. (a) All water treatment plant and water distribution system certified operators shall fulfill continuing education requirements in amounts specified in Table 7.5(b) in subsection (b):
(1) during each three (3) year period following the issuance of the certification card; and ~~prior to~~
(2) before having that certification card renewed.

(b) Continuing education credits required for certification card renewal in the grades of water treatment plant and water distribution system certified operators are listed in the following table:

Table 7.5(b)

Certified Operator Grades, Water Distribution System and Water Treatment Plant	Continuing Education Credits Required for Renewal
Grade O.I.T.	Contact hours shall match those required for the classification where operator is in training; certification card not renewable
Grade SSO	**10 contact hours**
Grade DSS	10 contact hours
Grade DSM	15 contact hours
Grade DSL	15 contact hours
Grade WT 1	10 contact hours
Grade WT 2	15 contact hours
Grade WT 3	25 contact hours
Grade WT 4	30 contact hours
Grade WT 5	30 contact hours
Grade WT 6	30 contact hours

(c) Continuing education credits required according to Table 7.5(b) in subsection (b) must adhere to a distribution of subject matter according to the following:
(1) A minimum of seventy percent (70%) of the required continuing education contact hours shall be obtained from the technical category of approved continuing education courses.
(2) ~~No~~ **Not** more than thirty percent (30%) of the required continuing education contact hours shall be obtained from nontechnical subject matter of approved continuing education courses.

(d) A person having a valid certification card in more than one (1) classification of water treatment plant or water distribution system:
(1) may be given duplicate continuing education credit from a single approved continuing education course for each water treatment plant and water distribution system certification to which the subject matter is applicable; and
(2) must obtain the greatest number of continuing education contact hours required by the various certifications held within the shared time period of overlap in order not to be required to obtain continuing education for each certificate held.

(Water Pollution Control Board; 327 IAC 8-12-7.5; filed Nov 20, 2000, 4:11 p.m.: 24 IR 989)

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 February 8, 2006, at 1:30 p.m. at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Water Pollution Control Board will hold a public hearing on new rules and amendments to 327 IAC 8-2-8.2, 327 IAC 8-2.5-6, 327 IAC 8-2.5-7, 327 IAC 8-2.5-8, 327 IAC 8-2.5-9, 327 IAC 8-2.6-6, 327 IAC 8-11-1, 327 IAC 8-12-1, 327 IAC 8-12-2, 327 IAC 8-12-3, 327 IAC 8-12-3.2, 327 IAC 8-12-3.4, 327 IAC 8-12-3.5, 327 IAC 8-12-3.6, 327 IAC 8-12-4, 327 IAC 8-12-4.5, 327 IAC 8-12-6, 327 IAC 8-12-7, and 327 IAC 8-12-7.5.

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 and amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Larry Wu, Rules Section, Office of Water Quality, (317) 234-1805 or (800) 451-6027 (in Indiana). Technical information concerning these rules may be obtained from Stacy Jones, Drinking Water Branch, Office of Water Quality, (317) 308-3292 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-0855 or (317) 233-6565 (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 Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor, Indianapolis, Indiana and are open for public inspection.

TITLE 327 WATER POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD

LSA Document #05-322(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES AT 327 IAC 5-4-3, 327 IAC 15-15-11, AND 327 IAC 15-15-12 CONCERNING CONCENTRATED ANIMAL FEEDING OPERATIONS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to concentrated animal feeding operations at 327 IAC 5-4-3, 327 IAC 15-15-11, and 327 IAC 15-15-12. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: 327 IAC 5-4-3; 327 IAC 15-15-11; 327 IAC 15-15-12.

AUTHORITY: IC 13-13-5-1; IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

(1) the environment; or

(2) persons to be regulated or otherwise affected by the proposed rule.".

BACKGROUND

Under the Clean Water Act, concentrated animal feeding operations (CAFOs) are point sources subject to the National Pollutant Discharge Elimination System (NPDES) permit process. This requirement is found in the federal regulations at 40 CFR 122.23(a). The term "CAFO" is defined in 40 CFR 122. This language has been adopted in Indiana and is found in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. On February 28, 2005, the Federal Circuit Court of Appeals, Second Circuit, in *Waterkeeper Alliance, et al v. EPA*, vacated the requirement to apply for a

permit. The United States Environmental Protection Agency (EPA) was ordered by the court to amend the federal regulation based on the court's decision. On October 31, 2005, EPA published a notice in the Federal Register (70 FR 62275) proposing to extend certain deadlines contained in the federal regulation while rule revisions required by the court are developed. The notice states that EPA will propose and finalize the extensions of time prior to February 13, 2006. In order for the Indiana rules to be consistent with EPA's stated intention to extend deadlines and amend the federal regulations, Indiana is delaying the dates for some CAFOs to submit information to become covered under the Indiana NPDES program. The dates in the Indiana rules are being delayed for three (3) years to allow time for the EPA regulation to become effective and for Indiana to adopt consistent rules that are at least as stringent as the federal regulations.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

The following information is required for each NIFL element:

(1) The environmental circumstance or hazard dictating the imposition of the NIFL element in order to protect human health and the environment in Indiana; and examples in which federal law is inadequate to provide this protection for Indiana.

(2) The estimated fiscal impact and expected benefits of the NIFL element, based on the extent to which the NIFL element exceeds the requirements of federal law.

(3) The availability for public inspection of all materials relied on by IDEM in the development of the NIFL element including, if applicable: health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data, analyses of methods to effectively implement the proposed rule, and other background data.

NIFL Element (A) Each specified date (see draft rule) is being delayed for three (3) years.

(1) In order for the Indiana rules to be consistent with the federal regulations, the Indiana dates are being delayed for three (3) years. Indiana's NPDES program is required to be at least as stringent as the federal regulations and Indiana was required by the United States District Court for the Southern District of Indiana, to adopt requirements for CAFOs.

(2) There is no fiscal impact by delaying the coverage and submittal dates in the Indiana rule.

(3) The decision of the Federal Circuit Court of Appeals, Second Circuit, *Waterkeeper Alliance, et al v. EPA*, which required EPA to amend the federal regulations for facilities with certain number of animals.

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

FINDINGS

The commissioner of IDEM has prepared written findings regarding the rulemaking concerning concentrated animal feeding operations. These findings are prepared under IC 13-14-9-7 and are as follows:

(1) The United States Court of Appeals for the Second Circuit's decision in *Waterkeeper Alliance, Inc., et al v. United States Environmental Protection Agency* will affect the Indiana CAFO rules. In a Federal Register Notice of Availability of Correspondence published October 31, 2005, (70 FR 62275) EPA stated,

" EPA received inquiries on the permit application date in the CAFO regulation and whether, in response to the February 28, 2005, decision by the Second Circuit Court of Appeals issued in *Waterkeeper v. EPA, 399 F. 3d 486 (2nd Cir. 2005)*, the permit application date may be extended."

"...the '2003 CAFO rule', contains the requirement that by February 13, 2006, all newly defined CAFOs must apply for a National Pollutant Discharge Elimination System (NPDES) permit. The 2003 CAFO rule also requires that all CAFOs develop and implement a Nutrient Management Plan by December 31, 2006. EPA is in the process of developing options for revising the 2003 CAFO rule to comply with the Second Circuit Court of Appeals' decision. The schedule for final action provides for a full and ample opportunity for public notice and comment, but it is not consistent with completion by February 13, 2006.".

As is the case with Indiana rulemaking, any options developed by EPA, cannot be changed by rule before the deadlines in the Indiana CAFO rules. Therefore, the Indiana dates must be delayed by three years to allow for the EPA to develop amendments to the federal regulations in compliance with the Second Circuit decision and for Indiana to adopt the changes

into the Indiana rules to be consistent with the federal regulations.

(2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.

(3) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#05-322(WPCB)[CAFO Rule Compliance Dates]
Marjorie Samuel
Rules, Planning, and Outreach Section
Office of Land Quality
Indiana Department of Environmental Management
100 N. Senate Avenue
Indianapolis, Indiana 46204-2251

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 West, 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) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed or hand delivered by December 30, 2005.

Additional information regarding this action may be obtained from Lynn West, Rules, Planning, and Outreach Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 5-4-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-4-3 Concentrated animal feeding operations

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) Concentrated animal feeding operations or CAFOs are point sources that require NPDES permits for discharges or potential discharges. Once an operation is defined as a CAFO under this section, the NPDES requirements for CAFOs apply with respect to all:

(1) animals in confinement at the operation; and ~~all~~

(2) manure, litter, and process wastewater generated by those animals or the production of those animals;

regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under 327 IAC 15-15.

(b) The following definitions apply throughout this rule:

(1) "Agricultural storm water discharge" means a precipitation-related discharge from a land application area where the manure, litter, or process wastewater has been applied in accordance with:

(A) this rule; and

(B) site-specific nutrient management practices;

to ensure the agronomic utilization of the nutrients in the manure, litter, or process wastewater.

(2) "Animal confinement area" means the areas of the operation where animals are housed. ~~It~~ **The term** includes, but is not limited to, the following areas:

(A) Open lots.
(B) Housed lots.
(C) Feedlots.
(D) Confinement houses.
(E) Stall barns.
(F) Free stall barns.
(G) Milk rooms.
(H) Milking center.
(I) Cowyards.
(J) Barnyards.
(K) Medication pens.
(L) Walkers.
(M) Animal walkways.
(N) Stables.

(3) "Animal feeding operation" or "AFO" means a lot or facility, other than an aquatic animal production facility, where both ~~these~~ **of the following** conditions are met:

(A) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of **at least** forty-five (45) days ~~or more~~ in any twelve (12) month period. ~~and~~

(B) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over at least fifty percent (50%) of the lot or facility.

(4) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.

~~(4)~~ **(5)** "Concentrated animal feeding operation" or "CAFO" means an AFO that is one (1) of the following:

(A) A large CAFO.
(B) A medium CAFO.
(C) Designated as a CAFO by the commissioner under subsection (c).

Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the

number of animals at an operation, if the AFOs adjoin each other or if the AFOs use a common area or system for land application of manure, litter, or process wastewater.

~~(5) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.~~

(6) "Land application area" means land under the control of an AFO owner or operator, whether the land is:

(A) owned;

(B) rented;

(C) leased; or

(D) subject to an access agreement;

to which manure, litter, or process wastewater from the production area is or may be applied.

(7) "Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines **at least** as many as ~~or more than~~ the number of animals specified in any of the following categories:

(A) Seven hundred (700) mature dairy cows, whether milked or dry.

(B) One thousand (1,000) veal calves.

(C) One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, **the following:**

(i) Heifers.

(ii) Steers.

(iii) Bulls. ~~and~~

(iv) Cow/calf pairs.

(D) Two thousand five hundred (2,500) swine each weighing **at least** fifty-five (55) pounds. ~~or more.~~

(E) Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.

(F) Five hundred (500) horses.

(G) Ten thousand (10,000) sheep or lambs.

(H) Fifty-five thousand (55,000) turkeys.

(I) If the AFO uses a liquid manure handling system, either of the following:

~~(I)~~ **(i)** Thirty thousand (30,000) laying hens or broilers. ~~if the AFO uses a liquid manure handling system.~~

(ii) Five thousand (5,000) ducks.

(J) If the AFO uses other than a liquid manure handling system, any of the following:

~~(J)~~ **(i)** One hundred twenty-five thousand (125,000) chickens, other than laying hens. ~~if the AFO uses other than a liquid manure handling system.~~

~~(K)~~ **(ii)** Eighty-two thousand (82,000) laying hens. ~~if the AFO uses other than a liquid manure handling system.~~

~~(L)~~ **(iii)** Thirty thousand (30,000) ducks. ~~if the AFO uses other than a liquid manure handling system.~~

~~(M) Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system.~~

(8) "Manure" means **the following:**

(A) Animal feces or urine, or both. ~~and~~

(B) Materials, such as:

(i) bedding;

(ii) compost;

(iii) raw materials; or

(iv) other materials;

commingled with animal feces or urine, or both. ~~feces and urine.~~

(9) "Manure storage area" means any area where manure is kept. ~~It~~ **The term** includes, but is not limited to, the following areas:

(A) Lagoons.

(B) Run-off ponds.

(C) Storage sheds.

(D) Stockpiles.

(E) Under house or pit storage.

(F) Liquid impoundments.

(G) Static piles.

(H) Composting piles.

(10) "Medium concentrated animal feeding operation" or "medium CAFO" means **the following:**

(A) An AFO, where the type and number of animals that are stabled or confined at the operation falls within the following ranges:

(i) Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry.

(ii) Three hundred (300) to nine hundred ninety-nine (999) veal calves.

(iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, **the following:**

(AA) Heifers.

(BB) Steers.

(CC) Bulls. ~~and~~

(DD) Cow/calf pairs.

(iv) Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing **at least** fifty-five (55) pounds. ~~or more.~~

(v) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds.

(vi) One hundred fifty (150) to four hundred ninety-nine (499) horses.

(vii) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs.

(viii) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys.

(ix) If the AFO uses a liquid manure handling system, either of the following:

~~(ix)~~ **(AA)** Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers. ~~if the AFO uses a liquid manure handling system.~~

(BB) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks.

(x) If the AFO uses other than a liquid manure handling system, any of the following:

~~(x)~~ **(AA)** Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred

ninety-nine (124,999) chickens, other than laying hens. ~~if the AFO uses other than a liquid manure handling system.~~

~~(xi)~~ **(BB)** Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens. ~~if the AFO uses other than a liquid manure handling system.~~

~~(xii)~~ **(CC)** Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks. ~~if the AFO uses other than a liquid manure handling system.~~

~~(xiii) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system. and~~

~~(B) One (1) of these conditions are met:~~

~~(i)~~ **(B)** Pollutants are discharged **in one (1) of the following ways:**

(i) Into waters of the state through a:

(AA) manmade ditch;

(BB) flushing system; or ~~other~~

(CC) similar manmade device. ~~or~~

(ii) ~~Pollutants are discharged~~ Directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(11) "No potential to discharge" means, for purposes of section 3.1 of this rule, that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.

(12) "Process wastewater" means the following:

(A) Water directly or indirectly used in the operation of the AFO for any or all of the following:

(i) Spillage or overflow from animal or poultry watering systems.

(ii) Washing, cleaning, or flushing **any of the following:**

(AA) Pens.

(BB) Barns.

(CC) Manure pits. ~~or~~

(DD) Other AFO facilities.

(iii) Direct contact swimming, washing, or spray cooling of animals.

(iv) Dust control.

(B) Process wastewater includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including **the following:**

(i) Manure.

(ii) Litter.

(iii) Feed.

(iv) Milk.

(v) Eggs. ~~or~~

(vi) Bedding.

(13) "Production area" means that part of an AFO that includes the following:

(A) The animal confinement areas.

(B) The manure storage areas.

(C) The raw materials storage areas.

(D) The waste containment areas.

(E) **An** egg washing or processing facility.

(F) **A** milking parlor.

(G) Any area used in the:

(i) storage;

(ii) handling;

(iii) treatment; or

(iv) disposal;

of mortalities.

(14) "Raw materials storage area" includes, but is not limited to, the following:

(A) Feed silos.

(B) Silage bunkers.

(C) Bedding materials storage sheds.

(D) Feed bins.

(E) Feedstuffs storage bunkers and sheds.

(15) "Small concentrated animal feeding operation" or "small CAFO" means an AFO that is:

(A) designated as a CAFO; and ~~is~~

(B) not a medium CAFO or large CAFO.

(16) "Waste containment area" means an area designed to contain manure, litter, or process wastewater and includes, but is not limited to, the following:

(A) Settling basins.

(B) Areas within berms and diversions that separate uncontaminated storm water.

(c) Case-by-case designation of an AFO as a CAFO shall occur as follows:

(1) Notwithstanding any other provision of this section, any AFO may be designated as a CAFO where it is determined to be a significant contributor of pollutants to the waters of the state. In making this designation, the commissioner shall consider the following factors:

(A) The size of the AFO and the amount of wastes reaching waters of the state.

(B) The location of the AFO relative to waters of the state.

(C) The means of conveyance of manure, litter, and process wastewaters into waters of the state.

(D) The:

(i) slope;

(ii) vegetation;

(iii) rainfall; and

(iv) other factors;

affecting the likelihood or frequency of discharge of manure, litter, and process wastewater into waters of the state.

(E) Other factors relevant to the significance of the pollution problem under consideration.

(2) In no case shall an AFO be designated as a CAFO under this subsection until there has been:

(A) an on-site inspection of the operation; and

(B) a determination that the operation should be regulated

under the permit program.

(3) No AFO with ~~less~~ **fewer** than the numbers of animals set forth in subsection (b)(10) shall be designated as a CAFO unless **pollutants are discharged in one (1) of the following ways:**

(A) ~~pollutants are discharged~~ Into waters of the state through a:

(i) manmade ditch;

(ii) flushing system; or ~~other~~

(iii) similar manmade device. ~~or~~

(B) ~~pollutants are discharged~~ Directly into waters of the state that originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) An owner or operator of a large CAFO does not need to seek permit coverage under this rule or 327 IAC 15-15 if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with ~~327 IAC 5-4-3.1.~~ **section 3.1 of this rule.**

(e) In addition to the requirements of 327 IAC 5-2-3, the owners or operators of new and existing CAFOs applying for an individual NPDES permit shall provide to the department the following:

(1) The following information on forms provided by the department:

(A) **The** name, telephone number, and mailing address of the owner and operator.

(B) **The** name, location, and address of the operation **and the** contact person and telephone number.

(C) **The** type and number of animals at the operation.

(D) **The** type of containment and storage and total capacity for manure, litter, and process wastewater storage (ton/gallons).

(E) **The** total number of acres under control of the applicant available for land application.

(F) **The** estimated amount of manure, litter, and process wastewater **as follows:**

(i) Generated per year (tons/gallons).

~~(G) Estimated amount of manure, litter, and process wastewater~~ **(ii)** Transferred to other persons per year (tons/gallons).

~~(H)~~ **(G) A** list of other environmental permits held and permit numbers including, if applicable, the CFO farm ID number provided on state CFO approval under 327 IAC 16.

~~(I)~~ **(H)** A soil survey map of the geographic area in which the CAFO is located showing the location of **the following:**

(i) The production area facility. ~~and~~

(ii) Land application areas.

~~(J)~~ **(I) The** SIC code for the operation.

~~(K)~~ **(J) The** name of **the** waterbody receiving drainage from the production area.

~~(L)~~ **(K) The** telephone number and title of **the** person signing the application.

(2) Payment of the application fee of fifty dollars ($50).

(f) The department shall process the application in accordance with the procedures specified in 327 IAC 5-3. The permit will require the applicant to comply with nutrient management and water quality standards under 327 IAC 15-15 and 327 IAC 16.

(g) The discharge of manure, litter, or process wastewater from a CAFO to waters of the state as a result of land application of manure, litter, or process wastewater by the CAFO to land application areas under the control of the CAFO owner or operator is a discharge subject to NPDES permit requirements under this rule or 327 IAC 15-15, except where it is an agricultural storm water discharge.

(h) Not later than one hundred eighty (180) days before the expiration of the permit, the permittee shall submit an application to renew the permit on forms provided by the department. The permittee need not reapply for a permit if the facility has:

(1) ceased operation and has demonstrated to the commissioner that there is no remaining potential to discharge; or

(2) reduced the number of animals such that the facility is no longer defined as a CAFO.

(i) The deadlines to either seek coverage under an individual NPDES permit ~~pursuant to~~ **under** this rule or under a general NPDES permit ~~pursuant to~~ **under** 327 IAC 15-15 are as follows:

(1) Operations defined as CAFOs ~~prior to~~ **before** April 14, 2003, must **do the following:**

(A) Seek coverage as of April 14, 2003. ~~and~~

(B) Comply with all applicable requirements at the time of coverage.

(2) The following operations, which were defined as CAFOs as of April 14, 2003, but were not defined as CAFOs ~~prior to~~ **before** that date, must seek coverage ~~no~~ **not** later ~~that~~ **than** February 13, ~~2006.~~ **2009:**

(A) CAFOs with **at least** one thousand (1,000) ~~or more~~ heifers.

(B) CAFOs with **at least** ten thousand (10,000) ~~or more~~ swine weighing less than fifty-five (55) pounds.

(C) CAFOs with **at least:**

(i) one hundred twenty-five thousand (125,000) ~~or more~~ chickens, other than laying hens; ~~if the CAFO uses other than a liquid manure handling system.~~ **or**

~~(D) CAFOs with~~ **(ii)** eighty-two thousand (82,000) ~~or more~~ laying hens;

if the CAFO uses other than a liquid manure handling system.

(3) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs ~~prior to~~ **before** April 14, 2003, because the operation has not discharged except in the event of a twenty-five (25) year, twenty-four (24) hour rainfall event must **do the following:**

(A) Maintain a CFO approval under 327 IAC 16 until:

(i) an individual NPDES permit is obtained; or

(ii) the operation receives general permit coverage under 327 IAC 15-15.

(B) Certify **the following** to the commissioner in writing within ninety (90) days of the effective date of this rule: ~~that:~~

(i) The AFO was not required to apply for a permit under ~~327 IAC 5;~~ **this article.**

(ii) A discharge has not occurred from the AFO. ~~and~~

(iii) The operation was constructed and is at all ~~time~~ **times** maintained to prevent a discharge during dry weather and wet weather up to and including a twenty-five (25) **year,** twenty-four (24) hour rainfall event.

(C) Sign the certification in accordance with 327 IAC 15-15-5(c).

(D) Seek permit coverage under an individual permit ~~pursuant to~~ **under** this rule or ~~under~~ a general NPDES permit ~~pursuant to~~ **under** 327 IAC 15-15 by April 13, ~~2006;~~ ~~and~~ **2009.**

(E) Not discharge manure, litter, or process wastewater to the waters of the state. If an AFO has a discharge after submitting a certification to the commissioner, the AFO must **do the following:**

(i) Notify the department of the discharge within twenty-four (24) hours of the discharge. ~~and~~

(ii) Seek coverage within thirty (30) days of the discharge under **either of the following:**

(AA) An individual NPDES permit ~~pursuant to the~~ **under this** rule. ~~or~~

(BB) A general NPDES permit ~~pursuant to~~ **under** 327 IAC 15-15.

(4) Any operation that has a discharge after submitting the certification under this subsection to the commissioner shall **do the following:**

(A) Immediately notify the department of the discharge. ~~and~~

(B) Seek coverage within thirty (30) days of the discharge under **either of the following:**

(i) An individual NPDES permit under this rule. ~~or~~

(ii) The NPDES general permit rule under 327 IAC 15-15.

(5) For operations that are newly constructed or that make changes, such that the operation becomes a CAFO as defined under this rule, after April 14, 2003, but are not new sources as defined by 327 IAC 15-15-3(4), **one (1) of the following:**

(A) For newly constructed operations not subject to effluent limitations guidelines in 40 CFR 412, effective April 14, 2003, one hundred eighty (180) days ~~prior to~~ **before the** commencement of operations. ~~or~~

(B) For other operations, ~~no~~ **not** later than ninety (90) days after becoming a CAFO as defined under this rule.

However, if an operational change that makes the operation a CAFO would not have made the operation CAFO ~~prior to~~ **before** April 14, 2003, the operation has until April 13, ~~2006,~~ **2009,** or ninety (90) days from becoming defined as a CAFO, whichever is later, to seek coverage.

(6) New sources, as defined by 327 IAC 15-15-3(4), must seek permit coverage at least one hundred eighty (180) days ~~prior to the time~~ **before** the CAFO is expected to commence operation. A new CAFO may commence operation at the time that the facility obtains an NPDES permit.

(7) Operations designated as a CAFO must seek permit coverage within ninety (90) days of being designated.

(j) A CAFO that obtains:

(1) an individual NPDES permit under this section; or ~~obtains~~

(2) a general permit under 327 IAC 15-15;

is not required to obtain or renew the CFO approval under 327 IAC 16-7.

(k) Permits for CAFOs shall include conditions based on the requirements in 327 IAC 5-2-8, ~~5-2-10,~~ **327 IAC 5-2-10,** and ~~5-2-12.~~ **327 IAC 5-2-12.** *(Water Pollution Control Board; 327 IAC 5-4-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642; filed Feb 23, 2004, 12:15 p.m.: 27 IR 2225)*

SECTION 2. 327 IAC 15-15-11 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-15-11 Soil conservation practice plan

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10

Sec. 11. (a) Except as provided in subsection (b), any person with a facility subject to this rule must develop and implement a soil conservation practice plan for land application areas by December 31, ~~2006.~~ **2009.** The following milestones shall be met for the development and implementation of the plan **by the owner or operator of the CAFO who:**

(1) ~~The owner or operator of the CAFO~~ Must identify the person who will develop the soil conservation practice plan by December 31, 2004.

(2) ~~The owner or operator of the CAFO~~ Must have completed the soil conservation practice plan by December 31, ~~2005.~~ **2008.**

(3) ~~The owner or operator of the CAFO~~ Must have implemented the soil conservation practice plan by December 31, ~~2006.~~ **2009.**

(4) ~~The owner or operator of the CAFO~~ Shall report progress toward meeting each milestone in this section in the annual report required under section 9(b) of this rule.

(b) For CAFOs that become subject to this rule after December 31, ~~2006,~~ **2009,** the requirement to develop and implement a soil conservation practice plan shall apply as of the date permit coverage commences. If a person is proposing to apply manure, litter, or process wastewater to snow-covered or frozen ground or to highly erodible land, a soil conservation practice plan must be developed and implemented in accordance with section 14 of this rule before ~~such~~ **the** application. Any land subject to a land use agreement:

(1) not owned or controlled by the CAFO owner or operator to which manure, litter, or process wastewater is applied; and

(2) where the landowner does not implement conservation practices, as applicable under this rule;

must be used in accordance with sections 10 **and** 12 ~~13, and~~ **through** 14 of this rule.

(c) All new sources, as defined in section 3 of this rule, must comply with this section upon the date of permit coverage under this rule.

(d) The soil conservation practice plan must:
(1) be developed in accordance with NRCS conservation practice standards; and ~~must~~
(2) specify, for each field receiving manure, litter, or process wastewater for land application, how to:
~~(1)~~ **(A)** reduce soil erosion to a tolerable loss (T); and
~~(2)~~ **(B)** minimize nutrient loss through leaching and run-off.

(e) The soil conservation practice plan must contain the following:
(1) A soil map clearly showing the specific fields subject to the conservation practices.
(2) A description of the soil types present.
(3) **The** slope of land application sites.
(4) Identification of appropriate:
(A) site-specific conservation practices to reduce soil erosion and control run-off of pollutants; **and**
~~(5) Identification of appropriate~~ **(B)** methods to minimize nutrient leaching.
~~(6)~~ **(5)** If applicable, **the following:**
(A) A plan for application of manure, litter, or process wastewater to frozen or snow-covered ground, as required under section 14 of this rule.
~~(7) If applicable,~~ **(B)** Identification of **the following:**
(i) Land application sites for frozen or snow-covered ground application.
~~(8) If applicable, identification of~~ **(ii)** Highly erodible land, as required under **section** 12(i) of this rule.

(f) The soil conservation practice plan shall be kept with the operating record required under section 17 of this rule. *(Water Pollution Control Board; 327 IAC 15-15-11; filed Feb 23, 2004, 12:15 p.m.: 27 IR 2238)*

SECTION 3. 327 IAC 15-15-12 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-15-12 Nutrient management requirements
Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10

Sec. 12. (a) CAFOs that are not new sources must conduct manure, litter, and process wastewater testing for nitrogen and phosphorus annually. Soil sampling and testing must be conducted at a minimum **of** once every three (3) years. Owners or operators may use the most recent data required under 327 IAC 16-7-11 to meet this requirement after the effective date of this rule.

(b) CAFOs that are new sources must, as of the date of permit coverage, conduct manure, litter, and process wastewater testing for nitrogen and phosphorus ~~prior to~~ **before** the first land application and annually thereafter. All CAFOs, except for new sources, shall conduct soil testing for phosphorus:
(1) as of the date of permit coverage; and
(2) once every three (3) years thereafter.

(c) Owners or operators shall use the protocols listed in the NRCS 590 standard for sampling and testing of soil, manure, litter, and process wastewater.

(d) CAFOs that are not new sources must adjust land application rates to conform with the NRCS 590 standard by December 31, ~~2006.~~ **2009.**

(e) CAFOs that are new sources must, as of the date of permit coverage, be prepared to conform with land application rates based on the NRCS 590 standard for the first and all subsequent land application activities.

(f) Except as otherwise provided under this section, application of manure, litter, and process wastewater must be in accordance with the setbacks in Table 1:

Table 1.
SETBACK DISTANCES FROM DOWNGRADIENT SURFACE FEATURES (in feet)

Known Feature	Less than or Equal to 6% Slope; or Residue Cover	Greater than 6% Slope
Public water supply wells and public water supply surface intake structures	500	500
Surface waters of the state	100	200
Sinkholes (measured from the surface opening or the lowest point)	100	200
Wells	100	200
Drainage inlets	100	200
Property lines and public roads	50	50

(1) All setback distances must be measured from the edge of the area of actual placement of manure, litter, or process wastewater on the land.
(2) The property line setback distances specified in Table 1 may be waived in writing by the owner of the adjoining property.
(3) **The setback is the width of the filter strip** if a properly designed and maintained filter strip of at least thirty-five (35) feet in width is located between the application site and **any of the following:**
(A) Surface waters of the state.
(B) Any known private well.
(C) The surface opening or lowest point of any sinkhole. ~~or~~

(D) Any drainage inlet, including water and sediment control basins.

~~then the setback is the width of the filter strip.~~

(4) The setback is ten (10) feet if a gradient barrier is located between the application site and **any of the following:**

(A) Surface waters of the state.

(B) Any known well.

(C) The surface opening or lowest point of any sinkhole. ~~or~~

(D) Any drainage inlet, including water and sediment control basins.

(g) Manure, litter, or process wastewater must not be applied to the land from manure application equipment operating on a public road.

(h) Manure, litter, and process wastewater shall not be applied to saturated ground.

(i) When planning land application, the owner or operator must take into account the:

(1) weather forecast and ~~the~~ likelihood of precipitation events for the twenty-four (24) hour period ~~prior to~~ **before** and after the application; and

(2) site soil conditions;

to assure that manure, litter, and process wastewater are not applied ~~prior to~~ **before** a rain event that, when combined with soil conditions, would likely result in run-off.

(j) Manure, litter, and process wastewater must not be applied to highly erodible land unless **the:**

(1) ~~the~~ land is:

(A) pastureland; **or**

~~(2) the land is~~ **(B)** planted in a cover crop that reduces or controls erosion; or

~~(3) the~~ **(2)** manure, litter, or process wastewater is applied in accordance with the soil conservation practice plan required under section 11 of this rule.

(k) Land application sites must be inspected to identify any field tile outlets under or immediately bordering the land application site. Visual monitoring of identified field tile outlets must occur during and immediately following land application of the manure, litter, or process wastewater. If there is evidence of manure or process wastewater discharging from the field tile outlet, the land application must cease immediately and the flow stopped or captured. Any flow that is captured shall be either land applied or returned to storage.

(l) If a CAFO is land applying manure, litter, or process wastewater by injection or single pass incorporation, the CAFO must comply with the following setbacks:

(1) Public water supply wells and public water supply surface intake structures: five hundred (500) feet.

(2) Surface waters: twenty-five (25) feet.

(3) Sinkholes: twenty-five (25) feet.

(4) Wells: fifty (50) feet.

(5) Drainage inlets: five (5) feet. ~~and~~

(6) Property lines and public roads: zero (0) feet.

(m) If a CAFO is land applying solid manure or litter by surface application followed by incorporation within twelve (12) hours, the CAFO must comply with the following setbacks:

(1) Public water supply wells and public water supply surface intake structures: five hundred (500) feet.

(2) Surface waters: fifty (50) feet.

(3) Sinkholes: fifty (50) feet.

(4) Wells: fifty (50) feet.

(5) Drainage inlets: fifty (50) feet. ~~and~~

(6) Property lines and public roads: ten (10) feet.

(Water Pollution Control Board; 327 IAC 15-15-12; filed Feb 23, 2004, 12:15 p.m.: 27 IR 2239)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on January 11, 2006, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Water Pollution Control Board will hold a public hearing on amendments to rules for concentrated animal feeding operations at 327 IAC 5-4-3, 327 IAC 15-15-11, and 327 IAC 15-15-12.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Lynn West, Rules, Planning, and Outreach Section, Office of Land Quality, (317) 232-3593 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 46204-2251

or call (317) 233-0855 or (317) 233-6565 (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 Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor, Indianapolis, Indiana and are open for public inspection.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD
LSA Document #05-219(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING REGULATION OF WASTES CONTAINING PCBs AT 329 IAC 4.1

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 329 IAC 4.1 concerning regulation of wastes containing PCBs. 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 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: September 1, 2005, Indiana Register (28 IR 3689).

CITATIONS AFFECTED: 329 IAC 4.1.

AUTHORITY: IC 13-20-15-1.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

IDEM is proposing to make the following specific changes:

329 IAC 4.1-1-6: Update the incorporated by reference Code of Federal Regulations to the July 1, 2003 edition. Eliminate Table 1 and 2, and specify the version of secondary incorporations not dated in the federal rules.

329 IAC 4.1-2-1; 329 IAC 4.1-4-1; 329 IAC 4.1-5-1; 329 IAC 4.1-6-1; 329 IAC 4.1-11-1: Correct the viewing/copying location and the address for the Superintendent of Documents.

329 IAC 4.1-6-2: Since the adoption of the PCB rule, 329 IAC 3.1-7-7 that established the Indiana hazardous waste manifest and prohibited uses of the manifest other than manifesting hazardous waste shipments, was repealed as required by P.L. 143-2000. That statute eliminated the Indiana hazardous waste manifest and required use of the Uniform Hazardous Waste Manifest (EPA Form 8700-22). Since 40 CFR 761.207(b) allows use of the Uniform Hazardous Waste Manifest, there is no longer a reason to except that section.

329 IAC 4.1: Change the department name to reflect the name change; make nonsubstantive language changes for consistent style.

329 IAC 4.1-7-5; 329 IAC 4.1-8-5; 329 IAC 4.1-9-5; 329 IAC 4.1-10-1: Correct the Office of Land Quality (OLQ) address.

329 IAC 4.1-13-1: Remove the reference to repealed rule 329 IAC 10-8.1 in subsection (a). Correct a typographical error in subsection (d) that causes confusion about how wastes that contain PCBs at a concentration of less than 50 ppm resulting from a source that had a concentration less than 50 ppm PCBs are regulated. Remove subdivision (f)(7) that refers to 329 IAC 10-8.1.

As addressed in the First Notice of this rulemaking, all sections of 329 IAC 4.1 are proposed to be amended under this rulemaking so 329 IAC 4.1 will be readopted for purposes of IC 13-14-9.5 through this rulemaking.

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

Nonsubstantive corrections being proposed with this rulemaking may potentially have very limited fiscal impact on regulated entities affected by this rule. Since IDEM is not proposing any new substantive requirements at this time, we do not expect that this rule will result in any new costs. Some limited cost savings may result from streamlining and improvement of the rule but it is not possible to quantify those potential savings, if any, at this time. IDEM invites comment on the potential fiscal impact of the draft rule.

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 Marjorie Samuel, Rules Section, Office of Land Quality at (317) 232-7995 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from September 1, 2005, through October 3, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period**.**

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

Marjorie Samuel (#05-219; Regulation of Wastes Containing PCBs)
Indiana Department of Environmental Management
Office of Land Quality, MC #65-45
100 N. Senate Ave., Room 1101
Indianapolis, Indiana 46204-2251

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) 232-8899 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 3, 2006.

Additional information regarding this action may be obtained from Kiran Verma, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-8899 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 329 IAC 4.1-1-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-1-1 Applicability
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. This article applies to a person who disposes of **any** solid or liquid waste containing PCBs. *(Solid Waste Management Board; 329 IAC 4.1-1-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3073)*

SECTION 2. 329 IAC 4.1-1-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-1-2 Enforcement
Authority: IC 13-20-15-1
Affected: IC 13-14-2-6; IC 13-20-15-6; IC 13-30-3

Sec. 2. This article ~~is~~ **shall be** enforced under IC 13-14-2-6 or IC 13-30-3, or both. No date contained in the federal regulations incorporated by reference in this article shall be construed to allow or require retroactive enforcement of this article. *(Solid Waste Management Board; 329 IAC 4.1-1-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3073)*

SECTION 3. 329 IAC 4.1-1-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-1-3 Penalties
Authority: IC 13-20-15-1; IC 13-20-15-7
Affected: IC 13-20-15-6

Sec. 3. Penalties for ~~violations~~ **a violation** of this article are listed in IC 13-20-15-7. *(Solid Waste Management Board; 329 IAC 4.1-1-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3073)*

SECTION 4. 329 IAC 4.1-1-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-1-4 Variances
Authority: IC 13-14-8-8; IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 4. The commissioner may grant a variance from compliance with ~~the provisions~~ **a provision** of this article in accordance with IC 13-14-8-8. *(Solid Waste Management Board; 329 IAC 4.1-1-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3074)*

SECTION 5. 329 IAC 4.1-1-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-1-5 Dilution
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 5. No person may avoid any provision **of this article** specifying a PCB concentration by diluting the PCBs unless otherwise specifically provided. *(Solid Waste Management Board; 329 IAC 4.1-1-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3074)*

SECTION 6. 329 IAC 4.1-1-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-1-6 Incorporation by reference
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 6. (a) When incorporated by reference in this article, references to 40 CFR 264 and 40 CFR 761 shall mean the version of that publication revised as of July 1, ~~1999.~~ **2003.**

(b) Sales of the Code of Federal Regulations are handled by the ~~Superintendent of Documents,~~ **U.S.** Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402.~~ **20401.** The telephone number for the **U.S.** Government Printing Office is ~~(202) 512-1800.~~ **(202) 512-0000.** The incorporated materials are available for public review at the Indiana Department of Environmental Management, Office of ~~Solid and Hazardous Waste Management,~~ **Land Quality,** Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

~~(c) Table 1 shows documents referenced in 40 CFR 761 and the updated versions of those documents that must be used to comply with this article.~~

~~Table 1.~~

~~Version Referenced in 40 CFR 761~~	~~Version to be Used~~	~~Source~~
~~40 CFR 136 as amended in 41 FR 52779 on December 1, 1976~~	~~40 CFR 136, revised as of July 1, 1999~~	~~1~~
~~"Thermal Processing and Land Disposal of Solid Waste" (39 FR 29337, Aug. 14, 1974)~~	~~40 CFR 240, revised as of July 1, 1999; 40 CFR 257, revised as of July 1, 1999; and 40 CFR 258, revised as of July 1, 1999~~	~~1~~

U.S. Department of Transportation (DOT) or U.S. Postal Service (USPS) shipping requirements, found respectively in 49 CFR 173.345 and U.S. Postal Regulations 652.2 and 652.3	49 CFR 172, revised as of October 1, 1999	1
ASTM Standard D93-90	ASTM Standard D93-99	2
ASTM Standard D129-64	ASTM Standard D129-95	2
ASTM Standard D240-87	ASTM Standard 240-92 (Reapproved 1997)[ε2]	2
ASTM Standard E258-67 (Reapproved 1987)	ASTM Standard E258-67 (Reapproved 1996)[ε1]	2
ASTM Standard D482-87	ASTM Standard D482-95	2
ASTM Standard D524-88	ASTM Standard D524-97	2
ASTM Standard D808-87	ASTM Standard D808-95	2
ASTM Standard D923-86 or ASTM Standard D923-89	ASTM Standard D923-97	2
ASTM Standard D1266-87	ASTM Standard D1266-98	2
ASTM Standard D1796-83 (Reapproved 1990)	ASTM Standard D1796-97	2
ASTM Standard D2158-89	ASTM Standard D2158-97	2
ASTM Standard D2709-88	ASTM Standard D2709-96[ε1]	2
ASTM Standard D2784-89	ASTM Standard D2784-98	2
ASTM Standard D3178-84	ASTM Standard D3178-89 (Reapproved 1997)	2
ASTM Standard D3278-89	ASTM Standard D3278-96[ε1]	2
ASTM Standard D4059	ASTM Standard D4059-96	2
"Visual Standard No. 2, Near-White Blast Cleaned Surface Finish", of the National Association of Corrosion Engineers (NACE)	Joint Surface Preparation Standard NACE No. 2/SSPC-SP 10 "Near-White Metal Blast Cleaning", Approved October 1994	3
"Visual Standard No. 3, Commercial Blast Cleaned Surface Finish", of the National Association of Corrosion Engineers (NACE)	Joint Surface Preparation Standard NACE No. 3/SSPC-SP 6 "Commercial Blast Cleaning", Approved October 1994	3

Source 1: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone (202) 512-1800.
Source 2: American Society for Testing and Materials, Customer Services, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, telephone (610) 832-9555.
Source 3: NACE International, P.O. Box 218340, Houston, Texas 77218-8340, telephone (281) 228-6200; or Steel Structures Painting Council, 4516 Henry Street, Suite 301, Pittsburgh, Pennsylvania 15213-3728, telephone (412) 687-1113.

(d) Table 2 shows documents referenced in 40 CFR 761 with no specified edition and provides the date of the edition that must be used to comply with this article.

Table 2.

Document Referenced in 40 CFR 761	Edition to be Used	Source
SW-846 or "Test Methods for Evaluating Solid Waste, Physical Chemical Methods", U.S. Environmental Protection Agency Publication SW-846	Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996)	1
Occupational Safety and Health Standards, 29 CFR 1910.106, Flammable and combustible liquids	Revised as of July 1, 1999	1
40 CFR 60 (referred to as part 60 of this chapter)	Revised as of July 1, 1999	1
40 CFR 112 (referred to as part 112 of this title)	Revised as of July 1, 1999	1
40 CFR 112.1(d)(2)	Revised as of July 1, 1999	1
40 CFR 112.4	Revised as of July 1, 1999	1
40 CFR 122 (referred to as part 122 of this chapter)	Revised as of July 1, 1999	1

40 CFR 264.143 (referred to as section 264.143 of this chapter)	Revised as of July 1, 1999	1
40 CFR 264.151 (referred to as section 264.151 of this chapter)	Revised as of July 1, 1999	1
40 CFR 264.175 (referred to as section 264.175 of this chapter)	Revised as of July 1, 1999	1
40 CFR 266, Subpart H (referred to as part 266, subpart H of this chapter)	Revised as of July 1, 1999	1
40 CFR 270.66 (referred to as section 270.66 of this chapter)	Revised as of July 1, 1999	1
DOT Hazardous Materials Regulations at 49 CFR parts 171 through 180	Revised as of October 1, 1999	1
49 CFR Chapter I, Subchapter C	Revised as of September 30, 1991	1
49 CFR 171.14	Revised as of October 1, 1999	1
"Verification of PCB Spill Cleanup by Sampling and Analysis", Midwest Research Institute	"Verification of PCB Spill Cleanup by Sampling and Analysis", U.S. Environmental Protection Agency Publication EPA-560/5-85-026, August 1985	2
"Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup", Midwest Research Institute	"Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup", U.S. Environmental Protection Agency Publication EPA-560/5-86-017, May 1986	2
"Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy", dated June 23, 1987 and revised on April 18, 1991	"Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy", June 23, 1987, revised and clarified on April 18, 1991	2

Source 1: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone (202) 512-1800.

Source 2: TSCA Technical Information Service, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, telephone (202) 554-1404.

(c) If not specified in the federal regulations incorporated by reference, the version of materials incorporated by reference in those federal regulations is the version that was in effect on the effective date of the 2006 amendments to this rule. *(Solid Waste Management Board; 329 IAC 4.1-1-6; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3074)*

SECTION 7. 329 IAC 4.1-2-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-2-1 Applicability; incorporation by reference
Authority: IC 13-20-15-1
Affected: IC 13-11-2; IC 13-20-15-6

Sec. 1. (a) The definitions in IC 13-11-2 **and this rule** apply to **throughout** this article. In addition to the definitions in IC 13-11-2, the definitions in this rule apply throughout this article.

(b) The definitions at 40 CFR 761.3 are incorporated by reference, except as provided otherwise in section 2 of this rule.

(c) 40 CFR 761.3 is available for viewing and copying at the Indiana Department of Environmental Management, Office of Solid and Hazardous Waste Management, **Land Quality,** Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

(d) The Code of Federal Regulations is available from the Superintendent of Documents, U.S. Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. 20402. **20401.** The telephone number for the Superintendent of Documents **Government Printing Office** is (202) 512-1800. **(202) 512-0000.** *(Solid Waste Management Board; 329 IAC 4.1-2-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3075)*

SECTION 8. 329 IAC 4.1-2-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-2-2 Exceptions and additions
Authority: IC 13-20-15-1
Affected: IC 13-11-2-155; IC 13-11-2-158; IC 13-20-15-6

Sec. 2. Exceptions and additions to the definitions **contained** in 40 CFR 761.3 are as follows:

(1) Delete the definition of "person" and substitute the definition at IC 13-11-2-158(a).

(2) Delete the definition of "PCB and PCBs" and substitute the definition of PCB at IC 13-11-2-155.

(Solid Waste Management Board; 329 IAC 4.1-2-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3075)

SECTION 9. 329 IAC 4.1-2-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-2-3 "Alternative disposal facility" defined
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 3. **(a)** "Alternative disposal facility" means a facility that:
(1) separates;
(2) processes;
(3) recovers;
(4) treats;
(5) transfers; or
(6) disposes of;
PCB waste. ~~and~~

~~(2) is not one (1) of~~ **(b) The term does not include** the following:
~~(A)~~ **(1)** A chemical waste landfill.
~~(B)~~ **(2)** An incinerator.
~~(C)~~ **(3)** A high efficiency boiler.
~~(D)~~ **(4)** A mobile facility.
~~(E)~~ **(5)** A generator of PCB waste.

(c) An alternative disposal facility ~~is~~ **provides** an alternative method of destroying PCBs as described in 40 CFR 761.60(e). *(Solid Waste Management Board; 329 IAC 4.1-2-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3075)*

SECTION 10. 329 IAC 4.1-2-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-2-4 "EPA" defined
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 4. "EPA" means the ~~United States~~ **federal** Environmental Protection Agency. *(Solid Waste Management Board; 329 IAC 4.1-2-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3075)*

SECTION 11. 329 IAC 4.1-2-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-2-5 "Mobile facility" defined
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 5. "Mobile facility" means machinery, equipment, or vehicles ~~of any nature~~ that are used or intended to be used at more than one (1) location for the:
(1) separation;
(2) processing;
(3) recovery, as defined at 329 IAC 10-2-149; or
(4) treatment;
of PCBs in a material or waste containing PCBs. *(Solid Waste Management Board; 329 IAC 4.1-2-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)*

SECTION 12. 329 IAC 4.1-2-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-2-6 "Municipal solid waste landfill" or "MSWLF" defined
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 6. "Municipal solid waste landfill" or "MSWLF" has the meaning ~~as~~ set forth ~~at~~ **in** 329 IAC 10-2-116. *(Solid Waste Management Board; 329 IAC 4.1-2-6; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)*

SECTION 13. 329 IAC 4.1-2-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-2-7 "Municipal solid waste landfill unit" or "MSWLF unit" defined
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 7. "Municipal solid waste landfill unit" or "MSWLF unit" has the meaning ~~as~~ set forth ~~at~~ **in** 329 IAC 10-2-117. *(Solid Waste Management Board; 329 IAC 4.1-2-7; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)*

SECTION 14. 329 IAC 4.1-2-8 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-2-8 "Nonmunicipal solid waste landfill" defined
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 8. "Nonmunicipal solid waste landfill" has the meaning ~~as~~ set forth ~~at~~ **in** 329 IAC 10-2-121. *(Solid Waste Management Board; 329 IAC 4.1-2-8; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)*

SECTION 15. 329 IAC 4.1-2-9 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-2-9 "Single location" defined
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 9. "Single location" means an aggregation of one (1) or more facilities that are:
(1) located on:
(A) one (1) piece of property; or ~~on~~
(B) contiguous or adjacent properties; and ~~that are~~
(2) owned or operated by the same person.
(Solid Waste Management Board; 329 IAC 4.1-2-9; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)

SECTION 16. 329 IAC 4.1-3-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-3-1 Conversion of federal terms
Authority: IC 13-20-15-1
Affected: IC 13-11-2-71; IC 13-20-15-6

Sec. 1. When used in 40 CFR 264, Subpart D, and 40 CFR 761, as incorporated by reference in this article, ~~substitute~~ the following **federal terms are defined as provided in this section** unless otherwise indicated:

(1) "Act" means the environmental management laws as defined at IC 13-11-2-71.

(2) "Administrator" or "assistant administrator" means the commissioner of the ~~Indiana~~ department. ~~of environmental management.~~

(3) "Agency" means the ~~Indiana~~ department. ~~of environmental management.~~

(4) "Director", "director, chemical management division", or "director, CMD" means the commissioner of the ~~Indiana~~ department. ~~of environmental management.~~

(5) "Environmental protection agency" or "EPA" means the ~~Indiana~~ department. ~~of environmental management.~~

(6) "He" means he or she, without regard to gender.

(7) "Notification requirements of Section 3010" means the notification requirements of this article.

(8) "RCRA permit" means state hazardous waste permit.

(9) "Regional administrator" means the commissioner of the ~~Indiana~~ department. ~~of environmental management.~~

(10) "She" means he or she, without regard to gender.

(11) "State", "authorized state", "approved state", and "approved program" means Indiana.

(12) "United States" means the state of Indiana.

(Solid Waste Management Board; 329 IAC 4.1-3-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)

SECTION 17. 329 IAC 4.1-4-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-4-1 Requirements for storage and disposal incorporated by reference
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. (a) 40 CFR 761, Subpart D, consisting of 40 CFR 761.50 through 40 CFR 761.79, is incorporated by reference, except as provided otherwise in section 2 of this rule.

(b) 40 CFR 761, Subpart D is available for viewing and copying at the ~~Office of Solid and Hazardous Waste~~ **Indiana Department of Environmental** Management, **Office of Land Quality,** Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

(c) The Code of Federal Regulations is available from the ~~Superintendent of Documents,~~ U.S. Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402.~~ **20401.** The telephone number for the ~~Superintendent of Documents~~ **U.S. Government Printing Office** is ~~(202) 512-1800.~~ **(202) 512-0000.** *(Solid Waste Management Board; 329 IAC 4.1-4-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)*

SECTION 18. 329 IAC 4.1-4-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-4-2 Exceptions and additions
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6; 40 CFR 761, Subpart D

Sec. 2. **The** exceptions and additions to 40 CFR 761, Subpart D, are as follows:

(1) Delete 40 CFR 761.60(b)(2)(iii)(B).

(2) Delete 40 CFR 761.60(b)(2)(iv)(B).

(3) Delete 40 CFR 761.60(b)(2)(v).

(4) In 40 CFR 761.60(b)(2)(vi), delete "large PCB capacitors or".

(5) Delete 40 CFR 761.60(f)(1)(iii).

(6) In 40 CFR 761.65(b), delete "After July 1, 1978,".

(7) Delete 40 CFR 761.65(d)(1).

(Solid Waste Management Board; 329 IAC 4.1-4-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3076)

SECTION 19. 329 IAC 4.1-5-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-5-1 PCB spill cleanup policy incorporated by reference
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. (a) 40 CFR 761, Subparts G and M through T are incorporated by reference, except as provided otherwise in section 2 of this rule.

(b) 40 CFR 761, Subparts G and M through T are available for viewing and copying at the Indiana Department of Environmental Management, Office of ~~Solid and Hazardous Waste Management,~~ **Land Quality,** Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

(c) The Code of Federal Regulations is available from the ~~Superintendent of Documents,~~ U.S. Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402.~~ **20401.** The telephone number for the ~~Superintendent of Documents~~ **U.S. Government Printing Office** is ~~(202) 512-1800.~~ **(202) 512-0000.** *(Solid Waste Management Board; 329 IAC 4.1-5-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3077)*

SECTION 20. 329 IAC 4.1-5-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-5-2 Exceptions and additions
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 2. **The** exceptions and additions to 40 CFR 761, Subparts G and M through T are as follows:

(1) In 40 CFR 761.398(a), delete "the Director, National

Program Chemicals Division (NPCD), (7404), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC" and substitute "the commissioner".

(2) In 40 CFR 761.398(a), delete "From time to time, the Director of NPCD will confirm the use of validated new decontamination solvents and publish the new solvents and validated decontamination procedures in the Federal Register".

(Solid Waste Management Board; 329 IAC 4.1-5-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3077)

SECTION 21. 329 IAC 4.1-6-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-6-1 Requirements for PCB waste disposal records and reports incorporated by reference

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. (a) 40 CFR 761, Subpart K, consisting of 40 CFR 761.202 through 40 CFR 761.218, is incorporated by reference, except as provided otherwise in section 2 of this rule.

(b) 40 CFR 761, Subpart K is available for viewing and copying at the Indiana Department of Environmental Management, Office of ~~Solid and Hazardous Waste Management,~~ **Land Quality,** Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

(c) The Code of Federal Regulations is available from the ~~Superintendent of Documents,~~ U.S. Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402.~~ **20401.** The telephone number for the ~~Superintendent of Documents~~ **U.S. Government Printing Office** is ~~(202) 512-1800.~~ **(202) 783-3238.** *(Solid Waste Management Board; 329 IAC 4.1-6-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3077)*

SECTION 22. 329 IAC 4.1-6-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-6-2 Exceptions and additions

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 2. Exceptions and additions to 40 CFR 761, Subpart K, are as follows:

(1) Delete 40 CFR 761.202(c).

(2) In 40 CFR 761.205(a)(1), delete "April 4, 1990" and substitute ~~a date six (6) months after the effective date of this article.~~ **with "February 13, 2001".**

(3) In 40 CFR 761.205(b), delete "April 4, 1990" and substitute ~~a date six (6) months after the effective date of this article.~~ **with "February 13, 2001".**

(4) In 40 CFR 761.205(d), delete "Chief, Operations Branch (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460" and substitute "Indiana Department of Environmental Management, Office of ~~Solid and Hazardous Waste Management, P.O. Box 6015,~~ **Land Quality, 100 North Senate Avenue, MC 65-45,** Indianapolis, Indiana ~~46206-6015.~~ **46204-2251".**

~~(5) Delete 40 CFR 761.207(b). The manifest described in 329 IAC 3.1-7 and available from the department must not be used for manifesting of PCB shipments. Generators may use copies of EPA Form 8700-22 from any other source to comply with this article.~~

~~(6)~~ **(5)** In 40 CFR 761.202(b), delete "After June 4, 1990,".

~~(7)~~ **(6)** In 40 CFR 761.211(a), delete "After April 4, 1990,".

(Solid Waste Management Board; 329 IAC 4.1-6-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3077)

SECTION 23. 329 IAC 4.1-7-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-7-1 Applicability

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. This rule applies to incinerators and high efficiency boilers **that are** required to be approved by the commissioner under 329 IAC 4.1-4-1, ~~that~~ **which** incorporates 40 CFR 761.60 and 40 CFR 761.70 by reference. *(Solid Waste Management Board; 329 IAC 4.1-7-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078)*

SECTION 24. 329 IAC 4.1-7-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-7-2 General

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 2. Incinerators and high efficiency boilers must comply with **the provisions of** 329 IAC 4.1-4 through 329 IAC 4.1-6. *(Solid Waste Management Board; 329 IAC 4.1-7-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078)*

SECTION 25. 329 IAC 4.1-7-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-7-3 Location restrictions

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6; IC 36-7-4

Sec. 3. (a) An incinerator or high efficiency boiler must comply with all **applicable** zoning and location restrictions of the political subdivision in which the facility is located. ~~if any are imposed.~~

(b) The owner or operator shall provide documentation that all required zoning and other local approvals, if any are required, have been obtained before written approval is requested under 329 IAC 4.1-4-1, ~~that~~ **which** incorporates 40 CFR 761.60 and 40 CFR 761.70 by reference, is requested. Documentation that all required zoning and other local approvals, if any are required, have been obtained may include the following:

(1) A copy of the:

(A) zoning requirements, if any, for solid waste facilities in the area; ~~where the facility is to be located.~~

~~(2) A copy of the~~ **(B)** improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for the site, if a solid waste land disposal facility is permitted by the zoning ordinance in the area; ~~where the facility is to be located.~~

~~(3) A copy of the~~ **(C)** amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if:

(i) a change in the zone maps is required for the area; ~~where the facility is to be located.~~ **or**

~~(4) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if~~ **(ii)** such amendment is required for the area; ~~where the facility is to be located;~~ **and**

~~(5) A copy of the~~ **(D)** variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-921 et seq., if such approval is required for the area;

where the facility is to be located.

~~(6)~~ **(2)** The status of any appeal of any zoning determination as described in ~~subdivisions (2)~~ **subdivision (1)(B)** through ~~(5)~~ **(1)(D)** and, if none is pending, the date by which the appeal must be initiated.

(c) The owner or operator of an incinerator or high efficiency boiler shall not dredge or fill wetlands, except in compliance with an appropriate permit required by Section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). *(Solid Waste Management Board; 329 IAC 4.1-7-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078)*

SECTION 26. 329 IAC 4.1-7-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-7-4 Public notice and public participation

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 4. Each applicant submitting a request for approval for an incinerator or high efficiency boiler under 329 IAC 4.1-4-1 shall comply with the public notice and public participation requirements in 329 IAC 10-12-1 as follows:

(1) For an incinerator or high efficiency boiler for which construction was started prior to ~~the effective date of this article,~~ **August 13, 2000,** the owner or operator shall comply with 329 IAC 10-12-1 before starting operation under this article.

(2) For an incinerator or high efficiency boiler for which construction is started on or after ~~the effective date of this article,~~ **August 13, 2000,** the owner or operator shall comply with 329 IAC 10-12-1 before beginning construction.

(Solid Waste Management Board; 329 IAC 4.1-7-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078)

SECTION 27. 329 IAC 4.1-7-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-7-5 Notice of activity

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 5. (a) The owner or operator of an incinerator or high efficiency boiler shall notify the following at least thirty (30) days before beginning any storage, separation, processing, recovery, treatment, or disposal of waste containing PCBs:

(1) Indiana Department of Environmental Management, Office of ~~Solid and Hazardous Waste Management,~~ **Land Quality,** 100 North Senate Avenue, ~~P.O. Box 6015,~~ **100 North Senate Avenue, MC 65-45,** Indianapolis, Indiana ~~46206-6015.~~ **46204-2251.**

(2) The:

(A) county health department; ~~for the county in which the facility is located.~~

~~(3) The~~ **(B)** emergency management director; and ~~the~~

(C) local emergency planning committee;

for the county in which the facility is located.

~~(4)~~ **(3)** The fire department with jurisdiction over the facility.

(b) Upon completion of any separation, processing, recovery, or treatment of PCB waste regulated under this article, the owner or operator of an incinerator or high efficiency boiler shall provide written notification to the department that the waste no longer contains PCBs. This notification must include either **of the following:**

(1) PCB disposal notification. ~~or~~

(2) Analytical documentation demonstrating that the PCBs were destroyed.

(Solid Waste Management Board; 329 IAC 4.1-7-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3078)

SECTION 28. 329 IAC 4.1-8-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-8-1 Applicability

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. This rule applies to **a** chemical waste ~~landfills~~ **landfill** required to be approved by the commissioner under 329 IAC 4.1-4-1, ~~that~~ **which** incorporates 40 CFR 761.75(c) by reference. *(Solid Waste Management Board; 329 IAC 4.1-8-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3079)*

SECTION 29. 329 IAC 4.1-8-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-8-2 General

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 2. A chemical waste landfill must ~~comply~~ **be in compliance** with 329 IAC 4.1-4 through 329 IAC 4.1-6. *(Solid Waste Management Board; 329 IAC 4.1-8-2; filed Jul 14, 2000, 11:09*

a.m.: 23 IR 3079)

SECTION 30. 329 IAC 4.1-8-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-8-3 Location restrictions
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6; IC 36-7-4

Sec. 3. (a) A chemical waste landfill must comply with the location restrictions in 329 IAC 10-16 that apply to a new MSWLF or MSWLF unit permitted under 329 IAC 10, except that the reduction of setback distances in 329 IAC 10-16-12 does not apply to a chemical waste landfill.

(b) The owner or operator **of a chemical waste landfill** shall provide documentation that all required zoning and other local approvals, if any are required, have been obtained before written approval is requested under 329 IAC 4.1-4-1, ~~that~~ **which** incorporates 40 CFR 761.75(c) by reference, is requested. Documentation that all required zoning and other local approvals, if any are required, have been obtained may include the following:

(1) A copy of the:

(A) zoning requirements, if any, for solid waste facilities in the area; ~~where the facility is to be located.~~

~~(2) A copy of the~~ **(B)** improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for the site, if a solid waste land disposal facility is permitted by the zoning ordinance in the area; ~~where the facility is to be located.~~

~~(3) A copy of the~~ **(C)** amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if:

(i) a change in the zone maps is required for the area; ~~where the facility is to be located.~~ **or**

~~(4) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if~~ **(ii)** such amendment is required for the area; ~~where the facility is to be located.~~ **and**

~~(5) A copy of the~~ **(D)** variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-921 et seq., if such approval is required for the area;

where the facility is to be located.

~~(6)~~ **(2)** The status of any appeal of any zoning determination as described in ~~subdivisions (2)~~ **subdivision (1)(B)** through ~~(5)~~ **(1)(D)** and, if none is pending, the date by which the appeal must be initiated.

(c) The owner or operator of a chemical waste landfill shall not dredge or fill wetlands, except in compliance with an appropriate permit required by Section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). *(Solid Waste Management Board; 329 IAC 4.1-8-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3079)*

SECTION 31. 329 IAC 4.1-8-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-8-4 Public notice and public participation
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 4. ~~Each~~ **An** applicant submitting a request for approval for a chemical waste landfill under 329 IAC 4.1-4-1, ~~that~~ **which** incorporates 40 CFR 761.75(c) by reference, shall comply with the public notice and public participation requirements in 329 IAC 10-12-1. *(Solid Waste Management Board; 329 IAC 4.1-8-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3079)*

SECTION 32. 329 IAC 4.1-8-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-8-5 Notice of activity
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 5. (a) The owner or operator of a chemical waste landfill shall notify the following at least thirty (30) days before beginning any storage, separation, processing, recovery, treatment, or disposal of waste containing PCBs:

(1) Indiana Department of Environmental Management, Office of ~~Solid and Hazardous Waste Management,~~ **Land Quality,** 100 North Senate Avenue, ~~P.O. Box 6015,~~ **MC 65-45,** Indianapolis, Indiana ~~46206-6015.~~ **46204-2251.**

(2) The:

(A) county health department; ~~for the county in which the facility is located.~~

~~(3) The~~ **(B)** emergency management director; and ~~the~~

(C) local emergency planning committee;

for the county in which the facility is located.

~~(4)~~ **(3)** The fire department with jurisdiction over the facility.

(b) Upon completion of any separation, processing, recovery, or treatment of PCB waste regulated under this article, the owner or operator of a chemical waste landfill shall provide written notification to the department that the waste no longer contains PCBs. This notification must include either **of the following:**

(1) PCB disposal notification. ~~or~~

(2) Analytical documentation demonstrating that the PCBs were destroyed.

(Solid Waste Management Board; 329 IAC 4.1-8-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3079)

SECTION 33. 329 IAC 4.1-9-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-9-1 Applicability
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. This rule applies to **an** alternative disposal ~~facilities~~ **facility** required to be approved under 329 IAC 4.1-4-1, ~~that~~ **which** incorporates 40 CFR 761.60(e) by reference. *(Solid Waste Management Board; 329 IAC 4.1-9-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080)*

SECTION 34. 329 IAC 4.1-9-2 IS AMENDED TO READ

AS FOLLOWS:

329 IAC 4.1-9-2 General
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 2. (a) The owner or operator of an alternative disposal facility must receive written approval ~~by~~ **from** the commissioner as follows:

(1) For an alternative disposal facility for which construction was started ~~prior to the effective date of this article,~~ **before August 13, 2000,** written approval must be received from the commissioner before starting operation under this article.

(2) For an alternative disposal facility for which construction is started on or after ~~the effective date of this article,~~ **August 13, 2000,** written approval must be received from the commissioner before beginning construction.

(b) The owner or operator of an alternative disposal facility shall **do the following:**

(1) Provide to the department a copy of the written approval from EPA required by 40 CFR 761.60(e).

~~(c) The owner or operator of an alternative disposal facility shall~~ **(2)** Comply with the requirements of 329 IAC 4.1-4 through 329 IAC 4.1-6.

(Solid Waste Management Board; 329 IAC 4.1-9-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080)

SECTION 35. 329 IAC 4.1-9-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-9-3 Location restrictions
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6; IC 36-7-4

Sec. 3. (a) An alternative disposal facility must comply with all **applicable** zoning and location restrictions of the political subdivision in which the facility is located. ~~if any are imposed.~~

(b) The owner or operator shall provide documentation that all required zoning and other local approvals, if any are required, have been obtained before written approval is requested under 329 IAC 4.1-4-1, ~~that~~ **which** incorporates 40 CFR 761.60(e) by reference, is requested. Documentation that all required zoning and other local approvals, if any are required, have been obtained may include the following:

(1) A copy of the:

(A) zoning requirements, if any, for solid waste facilities in the area; ~~where the facility is to be located.~~

~~(2) A copy of the~~ **(B)** improvement location permit or occupancy permit issued by the zoning authority having jurisdiction for the site, if a solid waste land disposal facility is permitted by the zoning ordinance in the area; ~~where the facility is to be located.~~

~~(3) A copy of the~~ **(C)** amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq., if:

(i) a change in the zone maps is required for the area; ~~where the facility is to be located.~~ **or**

~~(4) A copy of the amendment to the zoning ordinance adopted under IC 36-7-4-901 et seq.,~~ ~~if~~ **(ii)** such amendment is required for the area; ~~where the facility is to be located.~~ **and**

~~(5) A copy of the~~ **(D)** variance, special exception, special use, contingent use, or conditional use approved under IC 36-7-4-921 et seq., if such approval is required for the area; where the facility is to be located.

~~(6)~~ **(2)** The status of any appeal of any zoning determination as described in ~~subdivisions (2)~~ **subdivision (1)(B)** through ~~(5)~~ **(1)(D)** and, if none is pending, the date by which the appeal must be initiated.

(c) The owner or operator of an alternative disposal facility shall not dredge or fill wetlands, except in compliance with an appropriate permit required by Section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). *(Solid Waste Management Board; 329 IAC 4.1-9-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080)*

SECTION 36. 329 IAC 4.1-9-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-9-4 Public notice and public participation
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 4. ~~Each~~ **An** applicant submitting a request for approval of an alternative disposal facility under 329 IAC 4.1-4-1, ~~that~~ **which** incorporates 40 CFR 761.60(e) by reference, shall comply with the public notice and public participation requirements in 329 IAC 10-12-1 as follows:

(1) For an alternative disposal facility for which construction was started ~~prior to the effective date of this article,~~ **before August 13, 2000,** the owner or operator shall comply with 329 IAC 10-12-1 before beginning:

(A) storage;
(B) separation;
(C) processing;
(D) recovery; or
(E) treatment;

of PCB waste under this article.

(2) For an alternative disposal facility for which construction is started on or after ~~the effective date of this article,~~ **August 13, 2000,** the owner or operator shall comply with 329 IAC 10-12-1 before beginning construction of the facility.

(Solid Waste Management Board; 329 IAC 4.1-9-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080)

SECTION 37. 329 IAC 4.1-9-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-9-5 Notice of activity
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 5. (a) The owner or operator of an alternative disposal facility shall notify the following at least thirty (30) days before

beginning any storage, separation, processing, recovery, treatment, or disposal of waste containing PCBs:

(1) Indiana Department of Environmental Management, Office of ~~Solid and Hazardous Waste Management,~~ **Land Quality,** 100 North Senate Avenue, ~~P.O. Box 6015,~~ **MC 65-45,** Indianapolis, Indiana ~~46206-6015.~~ **46204-2251.**

(2) The:

(A) county health department; ~~for the county in which the facility is located.~~

~~(3) The~~ **(B)** emergency management director; and ~~the~~

(C) local emergency planning committee;

for the county in which the facility is located.

~~(4)~~ **(3)** The fire department with jurisdiction over the facility.

(b) Upon completion of any separation, processing, recovery, or treatment of PCB waste regulated under this article, the owner or operator of an alternative disposal facility shall provide written notification to the department that the waste no longer contains PCBs. This notification must include either **of the following:**

(1) PCB disposal notification. ~~or~~

(2) Analytical documentation demonstrating that the PCBs were destroyed.

(Solid Waste Management Board; 329 IAC 4.1-9-5; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3080)

SECTION 38. 329 IAC 4.1-10-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-10-1 Mobile facilities

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. (a) A mobile facility that operates for one hundred eighty (180) days or less in a single location must comply with the following requirements:

(1) 40 CFR 761, Subpart D, incorporated by reference at 329 IAC 4.1-4-1.

(2) The requirements of 329 IAC 4.1-4 through 329 IAC 4.1-6, except the requirement to obtain approval from the commissioner under this article if the facility has obtained approval from the EPA under 40 CFR 761.60(e).

(b) A mobile facility that operates for more than one hundred eighty (180) days in a single location must comply with the following requirements:

(1) 40 CFR 761, Subpart D, incorporated by reference at 329 IAC 4.1-4-1.

(2) 329 IAC 4.1-4 through 329 IAC 4.1-6.

(3) The mobile facility must comply with one (1) of the following:

(A) 329 IAC 4.1-7 for an incinerator or a high efficiency boiler.

(B) 329 IAC 4.1-8 for a chemical waste landfill.

(C) 329 IAC 4.1-9 for an alternative disposal facility.

(4) The owner or operator of the mobile facility shall comply with the public notice and public participation requirements in 329 IAC 10-12-1 before continuing operations under this article.

(c) The owner or operator of a mobile facility shall do the following:

(1) Provide to the department a copy of the written approval from EPA.

(2) Notify the following at least thirty (30) days before beginning an activity regulated under this article:

(A) Indiana Department of Environmental Management, Office of ~~Solid and Hazardous Waste Management,~~ **Land Quality,** 100 North Senate Avenue, ~~P.O. Box 6015,~~ **MC 65-45,** Indianapolis, Indiana ~~46206-6015.~~ **46204-2251.**

(B) The county health department for the county in which the activity takes place.

(C) The emergency management director and the local emergency planning committee for the county in which the facility is located.

(D) The fire department with jurisdiction over the facility.

(d) Upon completion of an activity regulated under this article, the owner or operator of a mobile facility shall provide written notification to the department that the waste no longer contains PCBs. This notification must include either **of the following:**

(1) PCB disposal notification. ~~or~~

(2) Analytical documentation demonstrating that the PCBs were destroyed.

(Solid Waste Management Board; 329 IAC 4.1-10-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3081)

SECTION 39. 329 IAC 4.1-11-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-11-1 Incorporation by reference; contingency plan

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. (a) 40 CFR 264, Subpart D, consisting of 40 CFR 264.50 through 40 CFR 264.56, is incorporated by reference, except as provided in subsection (d).

(b) 40 CFR 264, Subpart D is available for viewing and copying at the Office of ~~Solid and Hazardous Waste Management,~~ **Land Quality,** Indiana Government Center-North, Eleventh Floor West, 100 North Senate Avenue, Indianapolis, Indiana.

(c) The Code of Federal Regulations is available from the ~~Superintendent of Documents,~~ U.S. Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402.~~ **20401.** The telephone number for the ~~Superintendent of Documents~~ **U.S. Government Printing Office** is ~~(202) 512-1800.~~ **(202) 512-0000.**

(d) Delete 40 CFR 264.50. *(Solid Waste Management Board;*

329 IAC 4.1-11-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3081)

SECTION 40. 329 IAC 4.1-11-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-11-2 Contingency plan
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 2. (a) The owner or operator of:
(1) an incinerator or high efficiency boiler;
(2) a chemical waste landfill;
(3) an alternative disposal facility; or
(4) a mobile facility;
shall prepare and maintain a contingency plan in accordance with 40 CFR 264.51 through 40 CFR 264.54.

(b) The contingency plan must **be as follows:**
(1) ~~be~~ Designed to minimize hazards to human health and the environment from **any of the following:**
(A) Fires.
(B) Explosions. ~~or~~
(C) Any unplanned sudden or nonsudden release of PCB waste to **any of** the **following:**
(i) Air.
(ii) Soil.
(iii) Surface water. ~~or~~
(iv) Ground water. ~~and~~
(2) Meet the requirements of 40 CFR 264.51 through 40 CFR 264.54.

(c) ~~The~~ **A** person required to prepare a contingency plan shall provide copies of the contingency plan to the:
(1) local emergency planning committee; and
(2) ~~the~~ emergency management director;
for the county in which the facility is located before operation of the facility begins. *(Solid Waste Management Board; 329 IAC 4.1-11-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082)*

SECTION 41. 329 IAC 4.1-11-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-11-3 Use of contingency plan
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 3. ~~The~~ **A** owner or operator of a facility described in section 2(a) of this rule shall carry out the provisions of the contingency plan immediately whenever there is a:
(1) fire;
(2) explosion; or
(3) release of PCB waste;
that could threaten human health or the environment. *(Solid Waste Management Board; 329 IAC 4.1-11-3; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082)*

SECTION 42. 329 IAC 4.1-11-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-11-4 Emergency coordinator
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 4. (a) ~~The~~ **A** owner or operator of a facility described in section 2(a) of this rule shall designate an employee as the emergency coordinator as required in 40 CFR 264.55.

(b) The emergency coordinator shall carry out the duties described in 40 CFR 264.56 that are appropriate for the facility. *(Solid Waste Management Board; 329 IAC 4.1-11-4; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082)*

SECTION 43. 329 IAC 4.1-12-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-12-1 General
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. ~~Owners~~ **An owner** or ~~operators~~ **operator** of the following types of facilities shall comply with the financial assurance requirements in 329 IAC 3.1-15:
(1) An incinerator or high efficiency boiler.
(2) A chemical waste landfill.
(3) An alternative disposal facility.
(Solid Waste Management Board; 329 IAC 4.1-12-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082)

SECTION 44. 329 IAC 4.1-13-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-13-1 Disposal in MSWLF units or nonmunicipal solid waste landfill units
Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 1. (a) A person who disposes of waste containing or contaminated with PCBs in a MSWLF unit or a nonmunicipal solid waste landfill unit shall comply with all requirements of
~~(1)~~ 40 CFR 761, Subpart D, as incorporated by reference at 329 IAC 4.1-4. ~~and~~
~~(2) 329 IAC 10-8.1.~~

(b) In addition to the requirements of subsection (a), **a** person who disposes of any waste containing PCBs in a MSWLF unit that does not meet the design requirements of 329 IAC 10-17 or a nonmunicipal solid waste landfill shall **do the following:**
(1) Obtain written authorization from the commissioner ~~prior to~~ **before** disposal of any quantity of the waste. ~~and~~
(2) Comply with any conditions in the written authorization by the commissioner.

(c) In addition to the requirements of subsection (a), **a** person who disposes of a waste listed in Table 1 in a MSWLF unit that meets the design requirements of 329 IAC 10-17 shall **do the following:**
(1) Obtain written authorization from the commissioner ~~prior~~

~~to~~ **before** disposal of any quantity of the waste. ~~and~~

(2) Comply with any conditions in the written authorization by the commissioner.

Table 1.

Waste that contains PCBs at a concentration less than 50 ppm PCBs, resulting from a source that had a PCB concentration greater than or equal to 50 ppm PCBs.
Items or wastes containing inadvertently generated PCBs.

(d) ~~Instead of following~~ **In addition to** the requirements of subsections (a) through (c), ~~of this section,~~ a person who disposes of a waste that contains PCBs at a concentration of less than fifty (50) parts per million resulting from a source that had a PCB concentration less than fifty (50) parts per million PCBs in a:

(1) MSWLF; ~~unit~~ or ~~a~~

(2) nonmunicipal solid waste landfill;

unit shall provide a signed letter to the landfill stating that the PCB concentration in the source was less than fifty (50) parts per million PCBs.

(e) Fluorescent light ballasts containing PCBs that are:

(1) leaking; or

(2) no longer intact;

must be disposed of in accordance with 40 CFR 761.62(a) or 40 CFR 761.62(c).

(f) Nonleaking fluorescent light ballasts containing PCBs must be disposed of as follows:

(1) Dispose of the ballasts only in a MSWLF unit that meets the design requirements of 329 IAC 10-17.

(2) Place the ballasts in a container that meets the packaging requirements in 40 CFR 761.60(b)(2)(iv) as incorporated by reference in 329 IAC 4.1-4.

(3) Fill the interstitial space in the container with absorbent material capable of absorbing all liquid content of the ballasts and capacitors.

(4) Segregate containers of fluorescent light ballasts from organic liquids disposed of in the landfill unit.

(5) Before compacting with heavy equipment, cover containers of fluorescent light ballasts with a layer of:

(A) daily cover material;

(B) alternative daily cover material; or

(C) solid waste;

that is thick enough to prevent crushing of the containers.

(6) Collect leachate from the landfill unit and monitor the leachate for PCBs.

~~(7) Comply with all applicable requirements of 329 IAC 10-8.1.~~

(g) Nonleaking fluorescent light ballasts containing PCBs must not be disposed of in a MSWLF unit that does not meet the design requirements of 329 IAC 10-17. *(Solid Waste Management Board; 329 IAC 4.1-13-1; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3082; errata filed Jul 14, 2000, 10:59 a.m.: 23 IR 3091)*

SECTION 45. 329 IAC 4.1-13-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 4.1-13-2 Disposal in other solid waste land disposal facilities

Authority: IC 13-20-15-1
Affected: IC 13-20-15-6

Sec. 2. **Any** wastes containing or contaminated with PCBs must not be disposed of in:

(1) a construction/demolition site as defined at 329 IAC 10-2-36; or

(2) a restricted waste site as defined at 329 IAC 10-2-159.

(Solid Waste Management Board; 329 IAC 4.1-13-2; filed Jul 14, 2000, 11:09 a.m.: 23 IR 3083)

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 March 21, 2006, 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 amendments to 329 IAC 4.1, regulation of wastes containing PCBs.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Kiran Verma, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-8899 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 46204-2251

or call (317) 233-0855 or (317) 233-6565 (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 Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana, and are open for public inspection.

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 05-28

FOR: OPERATION HOOSIER RELIEF–HURRICANE RITA

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS.

WHEREAS, Indiana is a member of the Emergency Management Assistance Compact ("Compact"), an interstate agreement entered into by and among participating states for the purpose of providing mutual assistance in managing an emergency declared by the governor of an affected state as a result of, among other things, a natural disaster;

WHEREAS, on behalf of the governor of each state participating in the Compact, the designated state official assigned responsibility for emergency management is tasked with the formulation of appropriate interstate mutual aid plans and procedures necessary to implement the Compact;

WHEREAS, Indiana's Executive Director of Homeland Security ("Executive Director") is the designated state official assigned responsibility for emergency management in Indiana;

WHEREAS, any state requested to render mutual aid must take actions necessary to provide and make available the resources contemplated by the Compact in accordance with its terms;

WHEREAS, Hurricane Rita is forecasted to make landfall along the Texas and Louisiana coasts within the next twenty four (24) hours;

WHEREAS, Governor Rick Perry has proclaimed the existence of a threat of imminent disaster and has made certain requests for relief assistance under the Compact, in anticipation of Hurricane Rita striking the coast of Texas;

WHEREAS, Governor Kathleen Blanco has declared a state of emergency in the State of Louisiana due to the imminent threat posed by Hurricane Rita;

WHEREAS, on September 2 and September 6, 2005, Executive Order 05-24 and Executive Order 05-25, respectively, were issued, providing for relief efforts to states affected by Hurricane Katrina and declaring a state of disaster emergency in Indiana in anticipation of the need to support evacuees relocating to Indiana as a result of Hurricane Katrina;

WHEREAS, on September 9, 2005, Executive Order 05-27 was issued, authorizing state agencies and instrumentalities to take additional measures to assist in the Hurricane Katrina relief efforts;

WHEREAS, additional measures are now necessary and appropriate to ensure the State of Indiana's readiness to respond to requests for assistance from states affected by Hurricane Rita and to ensure that adequate supplies of fuel are available in its aftermath; and

WHEREAS, the Governor has received a letter from the Indiana State Department of Health recommending that, in the interest of ensuring the availability of fuel supplies, the inspection, testing and enforcement requirements related to the Reid vapor pressure level of gasoline and gasohol under sub-clauses (D)(iii) and (E)(iii) of Ind. Code § 16-44-2-8(b)(1) and 410 IAC 12.1 be waived effective immediately for a period of eight (8) days, until October 1, 2005.

NOW, THEREFORE, I, Mitchell E. Daniels, Jr., by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. All of the provisions of Executive Orders 05-24, 05-25 and 05-27 shall be, and hereby are, extended and applied with equal force and effect to relief efforts requested by the states affected by Hurricane Rita, and such provisions are hereby incorporated by reference into this Executive Order. The authority provided to agency heads in Executive Order 05-27 shall be extended to cover a period of thirty (30) days from the date hereof unless extended by further action of the Governor, provided that any agency action taken within such 30-day period shall not extend beyond a period of ninety (90) days from the date of such action, unless otherwise authorized by the Governor.

2. The state of disaster emergency declared in Executive Order 05-25 continues due to the ongoing influx of evacuees relocating

to the State of Indiana as a result of Hurricane Katrina and those expected to relocate to the State of Indiana in the wake of Hurricane Rita. This declaration of disaster emergency was in effect beginning August 29, 2005 and is hereby continued for thirty (30) days from the date hereof unless extended by further action of the Governor.

3. The Executive Director is authorized and empowered, to the fullest extent permitted by law, to take such actions as he deems necessary and appropriate to give effect to the extension of the measures previously authorized by Executive Orders 05-24, 05-25 and 05-27 to relief efforts related to Hurricane Rita.

4. In order to help alleviate anticipated fuel shortages in the aftermath of Hurricane Rita, and pursuant to Ind. Code § 10-14-3-11(b)(4), the Indiana State Department of Health is hereby authorized and directed to waive any inspection, testing and enforcement requirements related to the Reid vapor pressure (RVP) level of gasoline and gasohol under sub-clauses (D)(iii) and (E)(iii) of Ind. Code § 16-44-2-8(b)(1) and 410 IAC 12.1 for a period of eight (8) days following the date hereof, such waiver to be effective immediately and to expire on October 1, 2005, when the new RVP level for gasoline and gasohol under sub-clauses (D)(ii) and (E)(ii) of Ind. Code § 16-44-2-8(b)(1) would otherwise go into effect.

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 23rd day of September, 2005.

Mitchell E. Daniels, Jr.
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 05-29

FOR: WAIVER OF REGULATIONS RELATING TO MOTOR CARRIERS AND DRIVERS TRANSPORTING GASOLINE, DIESEL FUEL, JET FUEL, PROPANE, NATURAL GAS/CNG, AND ETHANOL

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS

WHEREAS, Hurricane Katrina and Rita have interrupted off shore oil and gas production in the Gulf of Mexico; shut down or reduced production by many of the refineries and pipelines along the Gulf Coast; and damaged storage facilities and transportation infrastructure throughout the region;

WHEREAS, this aftermath of the hurricanes affects the whole nation;

WHEREAS, in order to prevent significant disruptions to the nation's transportation system, existing stocks of gasoline, diesel fuel, jet fuel, propane, natural gas/CNG, and ethanol will need to be re-distributed by commercial motor vehicles in order to meet demand normally supplied by Gulf Coast operations;

WHEREAS, the United States Department of Transportation Federal Motor Carrier Safety Administration has declared that a regional emergency exists in the Midwest Region, including Indiana, in the highway transportation of certain petroleum products;

WHEREAS, as a result of the declared regional transportation emergency, the Federal Motor Carrier Safety Administration, acting pursuant to 49 CFR 390.23, has exempted motor carriers and drivers transporting gasoline, diesel fuel, jet fuel, propane, natural gas/CNG, and ethanol from 49 CFR Parts 390-399 to address transportation needs arising from the impact of the Hurricane Katrina and Rita. The exemption is effective from 1:00 P.M. EDT, September 26, 2005 until 11:59 p.m. EDT, October 26, 2005; and

WHEREAS, appropriate measures must be taken at the state level in response to the energy emergency to ensure that petroleum supplies will remain sufficient and to assure the health, safety, and welfare of Indiana residents and visitors.

NOW, THEREFORE, I, Mitchell E. Daniels, Jr., by virtue of the authority vested in me as Governor of the State of Indiana, do hereby declare

1. Motor carriers and drivers transporting gasoline, diesel fuel, jet fuel, propane, natural gas/CNG, and ethanol in Indiana to address transportation needs arising from Hurricane Katrina and Rita are exempt from compliance with any applicable state statute, order, or rule substantially similar to 49 CFR Parts 390-399. Any such provision of a state statute, order, or rule is suspended. The exemption and suspension is effective from the time of the issuance of this Order until 11:59 p.m. EDT, October 26, 2005.

2. This order applies only to gasoline, diesel fuel, jet fuel, propane, natural gas/CNG, and ethanol transported to address emergency needs arising from Hurricane Katrina and Rita. No other petroleum products are covered by the exemption.

3. Nothing contained in this declaration shall be construed as an exemption from the controlled substances and alcohol use and testing requirements (49 CFR Part 382 and any similar state statute, order, or rule), the commercial driver's license requirements (49 CFR Part 383 and any similar state statue *[sic., statute]*, order, or rule), the financial responsibility requirements (49 CFR Part 387 and any similar state statue *[sic., statute]*, order, or rule), applicable size and weight requirements, or any other portion of the regulations not specifically identified.

4. Motor carriers or drivers currently subject to an out-of-service order are not eligible for the exemption until the order expires or they have met the conditions for its rescission.

5. The Federal Motor Carrier Safety Administration has required that drivers for motor carriers that operate under the Declaration of Emergency issued under federal regulations must have a copy of the federal Declaration of Emergency in their possession. A copy of that Declaration of Emergency is attached to this Executive Order.

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 30th day of September, 2005.

Mitchell E. Daniels, Jr.
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 05-30

FOR: THE EFFECTIVENESS OF POPULATION INFORMATION FROM THE UNITED STATES BUREAU OF THE CENSUS FOR STATE LAW PURPOSES

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS.

WHEREAS, Indiana Code 1-1-3.5-3 provides that, with respect to any Indiana statute that classifies political subdivisions based on their population according to the federal census results, the effective date of each federal special census, special tabulation, or corrected population count is April 1 of the calendar year following the year in which the tabulation of population or corrected population count is delivered to the State by the United States Secretary of Commerce under 13 U.S.C. 141 and is received by the Governor; and

WHEREAS, Indiana Code 1-1-3.5-3 further provides that the Governor shall issue an Executive Order upon receipt of the tabulation of population or corrected population count:

NOW, THEREFORE, I, Mitchell E. Daniels, Jr., Governor of the State of Indiana, as required by Indiana Code 1-1-3.5-3, do hereby acknowledge delivery by the U.S. Secretary of Commerce of the following federal special tabulation as of the date set forth in the list below and note that the effective date of the tabulation for the political subdivision set forth opposite such date is April 1, 2006:

September 20, 2005 Hamilton, Town of 1,544 (Special tabulation)

In compliance with IC 1-1-3.5-5(a), I have forwarded a copy of this Executive Order to the Director of the Indiana State Library for distribution under IC 1-1-3.5-5(b), to the Election Division of the Office of the Secretary of State, and to the *Indiana Register* for publication.

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 11th day of October, 2005.

Mitchell E. Daniels, Jr.
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Office of Land Quality
100 N. Senate Avenue
Indianapolis, IN 46204-2241
OLQ PH: (317) 232-8941

Title: Use of Chipped Tires in Sewage Systems
Identification Number: WASTE-0058-NPD
Date Originally Effective: November 17, 2005
Dates Revised: None
Other Policies Repealed or Amended: None
Citations Affected: 329 IAC 10-3-1
Brief Description of Subject Matter: Use of waste tire chips in on-site sewage systems.

This non-rule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. This nonrule policy document may be put into effect by IDEM 30 days after presentation to the appropriate board**.** Pursuant to IC 13-14-11.5, this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate board. If the nonrule policy is presented to more than one board, it will be effective 30 days after presentation to the last. IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of presentation to the board and publication.

The purpose of this nonrule policy is to approve the use of chipped tires in on-site sewage (septic) systems when such use is approved by the Indiana State Department of Health (ISDH).

IDEM administers environmental statutes and rules regarding waste tires which contain provisions for disposal of tires, creating funds for clean up of tire dumps, and registration requirements for processors, storers and transporters of waste tires. Approximately six million waste tires are generated each year in Indiana. IDEM estimates that there are an additional 11 million tires stockpiled in Indiana. In general, the majority of Indiana's waste tires are collected for processing, and less than 2% of the tires are reused.

While the regulations do not specifically address beneficial reuses of waste tires, 329 IAC 10-3-1(16) provides that the Commissioner may approve the use of any solid waste for legitimate purposes if it is determined that such use does not pose a threat to public health or the environment. (Traditionally, this has been done on a case by case basis. Without an approval from the Commissioner, waste tires would be fully subject to the above referenced regulations, which do not contain reuse provisions.) The Department has determined that the use of chipped tires in septic systems is a legitimate reuse. The purpose of this document is to provide a generic one-time approval and eliminate the need for case by case approvals from IDEM for the use of chipped tires in on-site septic systems.

Chipped tires are utilized as aggregate in soil absorption fields and perimeter drains in place of more commonly used gravel or crushed stone. The use of chipped tires is not a new or experimental technology and such use is already approved in a number of states. Studies are available which support such use. Experience thus far has demonstrated to the Department's satisfaction that chipped tire aggregate is an effective and environmentally safe alternative to traditional aggregates. Uses in other states have not identified any adverse impacts on ground water and the tire chips provide more surface area for development of micro biota colonies and improved biodegradation of sewage. Some concern with heat build up from oxidation of steel belts within chipped tires can be avoided by limiting the depth of the chipped tires to ten (10) feet.

With this Non-rule Policy Document, the Commissioner is approving the use of chipped waste tires for use as aggregate in on-site sewage systems. Such use is subject to the following conditions:

1. Chipped tires may only be used as aggregate when such use is approved by the ISDH, or approved by a local health department as authorized by ISDH.
2. The chipped tires must be utilized in accordance with the requirements of the ISDH, including size restrictions.
3. Leach fields constructed with chipped tires must not be more than ten (10) feet deep.
4. Any unused chipped waste tires must be managed in accordance with the applicable solid waste rules. Unused chips may be reused at another site or disposed at a permitted municipal solid waste landfill.

Concern has been expressed that the waste tire rules would require a waste tire storage permit if waste tire chips equivalent to 1,000 waste tires, or more, are stored at either a location that was going to utilize the waste tire chips in a septic system or at a waste tire processor that makes shreds for use in septic systems. Under the rules shredded tires that are to be utilized in a septic system would be considered a transformed tire (329 IAC 15-2-12) and therefore not subject to the rule (see 329 IAC 15-1-1(b)(6)). It is important that a waste tire processor be able to demonstrate a market for the commodity in order for the shredded tires to qualify for the exemption from the rule.

IDEM encourages the reuse of waste tires rather than disposal at a landfill. The Department pursuant to 329 IAC 10-3-1-(16)

on a case-by-case basis or through non-rule policy documents when generic approvals are deemed appropriate may approve other legitimate uses of waste tires not addressed here.

If you need additional information, or have questions or concerns, please contact the staff of the Compliance and Response Branch at 317-308-3103. The IDEM toll free telephone number is 1-800-451-6027. Information is also available online at http://www.idem.IN.gov/olq.

DEPARTMENT OF HOMELAND SECURITY
DIVISION OF FIRE AND BUILDING SAFETY

Title: Interpretation of the term "exercise room" for purposes of Table 1003.2.2.2 of the **2003 Indiana Building Code (675 IAC 13-2.4)**

Date: December 1, 2005

Purpose: To assist code enforcement officials, design professionals, and the general public in determining the required number of exits for an "exercise room" for purposes of Table 1003.2.2.2 of the 2003 Indiana Building Code.

Interpretation: The agency interprets "exercise room" to include rooms in which any one or more of the following are located:

Weight machines.
Free weights.
Cardio-vascular workout equipment.
Exercise bicycles.
Platforms used for aerobics.
Equipment such as parallel bars, rings, or other gymnastics equipment.

An exercise room may also be a room without any of the above listed equipment that is used for dance, karate, gymnastics, or similar activities for which the room has no equipment, no spectator seating of any kind, no chairs or tables, and is used exclusively for practice or training. A room that has any of the items listed above and has spectator seating of any kind or chairs or tables is not considered to be an exercise room.

DEPARTMENT OF STATE REVENUE
Departmental Notice #2
December 1, 2005
Prepayment of Sales Tax on Gasoline

This document is not a "statement" required to be published in the Indiana Register under IC 4-22-7-7. However, under IC 6-2.5-7-14, the Department is required to publish the prepayment rate in the June and December issues of the Indiana Register. The purpose of this notice is to inform each refiner, terminal operator, and qualified distributor known to the Department to be required to collect prepayments of sales tax on gasoline of the "prepayment rate" effective for the next six-month period. A prepayment rate is calculated twice a year by the Department and is effective for the period January 1 through June 30, or, July 1 through December 31, as appropriate.

The prepayment rate is defined by IC 6-2.5-7-1 as the product of:

1) the statewide average retail price per gallon of gasoline (excluding the Indiana gasoline tax, the federal gasoline tax, and the Indiana gross retail tax); multiplied by
2) the state gross retail tax rate [6%]; multiplied by
3) ninety percent (90%); and then
4) rounded to the nearest one-tenth of one cent ($0.001)

The prepayment rate of sales tax on gasoline for the six – (6) month period beginning January 1, 2006, is eleven and two-tenths cents ($0.112) per gallon.

Using the most recent retail price of gasoline available (as required by IC 6-2.5-7-14(b)), the Department has determined the statewide average retail price per gallon of gasoline to be two dollars and six and six tenths cents ($2.066). The most recent retail price of gasoline available was based on data contained in the November 2005 Petroleum Marketing Monthly as published by the Energy Information Agency.

The prepayment rates for periods beginning July 1, 1994 are established below:

Period			Rate Per Gallon
July 1, 1994	to	December 31, 1994	2.9 cents
January 1, 1995	to	June 30, 1995	3.7 cents

July 1, 1995	to	December 31, 1995	3.3 cents
January 1, 1996	to	June 30, 1996	3.3 cents
July 1, 1996	to	December 31, 1996	3.4 cents
January 1, 1997	to	June 30, 1997	4.0 cents
July 1, 1997	to	December 31, 1997	3.9 cents
January 1, 1998	to	June 30, 1998	4.0 cents
July 1, 1998	to	December 31, 1998	2.9 cents
January 1, 1999	to	June 30, 1999	3.0 cents
July 1, 1999	to	December 31, 1999	2.4 cents
January 1, 2000	to	June 30, 2000	3.6 cents
July 1, 2000	to	December 31, 2000	4.6 cents
January 1, 2001	to	June 30, 2001	4.9 cents
July 1, 2001	to	December 31, 2001	4.9 cents
January 1, 2002	to	June 30, 2002	4.9 cents
July 1, 2002	to	December 31, 2002	3.2 cents
January 1, 2003	to	June 30, 2003	5.3 cents
July 1, 2003	to	December 31, 2003	6.6 cents
January 1, 2004	to	June 30, 2004	6.5 cents
July 1, 2004	to	December 31, 2004	6.6 cents
January 1, 2005	to	June 30, 2005	7.6 cents
July 1, 2005	to	December 31, 2005	7.8 cents
January 1, 2006	to	June 30, 2006	11.2 cents

Indiana Department of State Revenue
John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
DEPARTMENTAL NOTICE #3
NOVEMBER, 2005
INTEREST RATES FOR CALENDAR YEAR 2006

This document does not meet the definition of a "statement" required to be published in the *Indiana Register* under IC 4-22-7-7. However, under IC 6-8.1-10-1(c), the Commissioner is required to establish, on or before November 1 of each year, the applicable interest rates for tax overpayments and underpayments that will take effect for the immediately succeeding calendar year. The purpose of this notice is to inform the public of the interest rates that will be effective for the calendar year beginning January 1, 2006.

The rate of the interest for an excess tax payment is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the Auditor of State's comprehensive annual financial report. Based on this calculation, the rate of interest for an excess tax payment for calendar year 2006 will be two percent (2%).

The rate of interest for an underpayment of tax is the percentage rounded to the nearest whole number that equals two (2) percentage points above the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the Auditor of State's comprehensive annual financial report. Based on this calculation, the rate of interest for an underpayment of tax for calendar year 2006 will be four percent (4%).

For taxpayer information, attached is a list of comparable percentages applicable in previous calendar years.

Indiana Department of State Revenue
John Eckart,
Commissioner

Attachment

YEAR	OVERPAYMENTS	DELINQUENT PAYMENTS
1989	10%	10%
1990	10%	10%
1991	10%	10%
1992	8%	8%
1993	7%	7%

1994	7%	7%
1995	4%	6%
1996	5%	7%
1997	5%	7%
1998	5%	7%
1999	5%	7%
2000	5%	7%
2001	6%	8%
2002	6%	8%
2003	4%	6%
2004	2%	4%
2005	1%	3%

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 96-0196 and 02-0001
Corporate Income Tax
For the Years 1991 – 1993 and 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Corporate Income Tax—Computation of NOL

Authority: IC 6-3-2-2.6; IC 6-3-2-12.

Taxpayer protests the Department's computation of Taxpayer's net operating loss. The issue is if the foreign source dividends are deducted in determining the NOL.

II. Corporate Income Tax—Flow through of income reported in K-1s

Authority: 45 IAC 1-1-159.1; IRC § 704.

Taxpayer argues that interest income, capital gains, and other income reported on K-1s is not flow through income; on this basis, it should not be subject to gross income tax.

III. Corporate Income Tax—Industrial Processing Service Income

Authority: IC 6-2.1-5-5(d).

Taxpayer argues that the income that the Department taxed as industrial processing service income is incorrect. Taxpayer argues that title passed from their customer to them and then back to the customers—making it sales in interstate commerce. Additionally, taxpayer argues that regardless if it is industrial processing or not, the income is not taxable because it is income included in the consolidated return. The Department verified that this is true for 1993 and it to be removed as an intercompany elimination. However, the issue is to be decided for 1991 and 1992.

IV. Corporate Income Tax—Forgiveness of Debt

Authority: 45 IAC 1-1-10.

Taxpayer argues that forgiveness of debt taxed for gross income should not be taxed because there was a mortgage on the property.

V. Corporate Income Tax—Penalty

Authority: IC 6-8.1-10-2.1(a)(3); IC 6-8.1-10-2.1(b); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer objected to the imposition of a 10% penalty on the deficiency assessed.

Resolved Issues

These issues are resolved. They are included in this letter of findings so as to have a record that all outstanding issues for the periods in question have been addressed and resolved.

- **Protest Issues I. and II.—T Ave Co.**

The Department has removed adjustments to Taxpayer's consolidated return relating to T Ave Co. in the existing audits and

will refrain from taxing the income of that company through the end of the 2001 tax year. The Department will revisit the issue for all subsequent years.

- **Protest Issues VI. And VII.—B Management**
  The Department has verified that the income from the sale of tangible personal property is low rate income. This makes the double taxation protest moot.
- **Protest Issue VIII.—Specific commission income**
  The Department has verified and has adjusted the assessment.
- **Protest Issues IX and X—Royalty income**
  The Department has verified that the royalty income was properly deducted as intercompany transfers.

STATEMENT OF FACTS

Taxpayer is a multi-tiered organization with subsidiaries and affiliates engaged in two distinct lines of business: a multi-state chemical manufacturing & refining business and an investment real estate partnership.

I. Corporate Income Tax—Computation of NOL

DISCUSSION

Taxpayer protested the computation of the net operating loss deduction, claiming that the computation of loss should include the foreign source dividend deduction. The NOL deduction is calculated using the guidelines in IC 6-3-2-2.6. The foreign source dividend deduction is allowed under IC 6-3-2-12. Foreign source dividend is not included as a deduction in the NOL calculation outlined in IC 6-3-2-2.6. The foreign source dividend deduction is only allowed in computing the current year adjusted gross income and is not allowable when determining the NOL deduction. This issue was addressed and denied in a previous letter of finding issued concerning Taxpayer.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

II. Corporate Income Tax—Flow through of income reported in K-1s

DISCUSSION

Taxpayer objected to the Department's computation of gross income attributable to its distributive shares of partnership income. Taxpayer argues that certain distributive share income items reported on their K-1s should not flow through as taxable gross income. Specifically, Taxpayer objects to the flow through of interest income, capital gain income, and other income. In addition, Taxpayer argues that there is no basis to disallow certain negative flow through items within the separate K-1 items. Taxpayer argues that the only item of flow through should be ordinary income.

45 IAC 1-1-159.1, which was the regulation in force for the audit years in question, states that an amount credited to a corporate partner as its distributive share of partnership income which is derived from sources within Indiana is subject to gross income tax—provided the partnership has not previously paid the gross income tax due. The Department has held, based on the regulation, that net distributive share income is subject to gross income tax. Taxpayer argues that since sections of the regulation only incorporate part of IRC § 704, interest, capital gains, and other income are not part of the flow through income of the partnership distribution. There is no basis to hold that these items are not part of flow through income.

As well, the Department disallowed the negative income items within a particular K-1 from being netted against positive income items to determine the net distributive share. The department determined that this calculation was not appropriate for this K-1 and disallowed the net calculation, leaving the positive distribution for this K-1 as flow through income subject to gross income tax. Taxpayer has failed to adequately rebut the Department's position.

FINDING

For the reasons stated above, Taxpayer's protest is denied**.**

III. Corporate Income Tax—Industrial Processing Service Income

DISCUSSION

Chemicals were transferred from Taxpayer's chemical subsidiary to Taxpayer's industrial subsidiary. The Department asserted that Taxpayer was acting as an industrial processor. Taxpayer argued that title passed from chemical subsidiary to industrial subsidiary and then back to chemical subsidiary. Taxpayer argued that these receipts are exempt because they are derived in interstate commerce. Taxpayer stated in its protest letter that it objects to the classification of the sale of tangible personal property as an industrial processing service performed in Indiana and subject to Indiana gross income tax. This issue was addressed and denied in a previous letter of finding issued concerning Taxpayer.

In this protest, Taxpayer included an additional argument to their protest—that the income was an intercompany transfer. For tax year 1993, Taxpayer is correct because a consolidated return was filed and the income was eliminated as intercompany. IC 6-2.1-5-5(d) statutorily permitted affiliated corporations to file consolidated returns. This had the accounting effect of eliminating as income receipts transferred between affiliates. But for 1991 and 1992, Taxpayer did not file a consolidated return; therefore, an intercompany elimination of income cannot be performed.

FINDING

For the reasons stated above, Taxpayer is sustained for 1993 and is denied for 1991 and 1992.

IV. Corporate Income Tax—Forgiveness of Debt

DISCUSSION

Taxpayer objects to the Department imposing gross income tax on the conveyance of title to real estate in lieu of foreclosure. Taxpayer argues that forgiveness of debt should not be taxable as there was a mortgage on the property.

This is a constructive receipt of income. Taxpayer owned a piece of property which had a mortgage on it; the mortgage exceeded Taxpayer's cost. When the property was foreclosed, the mortgage was written off. Thus, Taxpayer has a gain for forgiveness of debt in excess of their cost. This is taxable under the guidelines of 45 IAC 1-1-10, which states that constructive receipts are those items of gross income which are not actually received by the taxpayer but which are credited to the taxpayer; constructive receipts include the partial or complete forgiveness of debts; such receipts are required to be reported on the tax return for the tax period in which they are credited.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

V. Corporate Income Tax—Penalty

DISCUSSION

Taxpayer objected to the imposition of a 10% penalty on the deficiency assessed. In the letter of protest submitted to the Department, Taxpayer states, "Due to the fact that the audit of taxable years 1988, 1989, and 1990 was not completed until February 23, 1995, many of the issues related to the audit adjustments for taxable years 1991, 1992, and 1993 were unresolved when the taxpayer prepared its Indiana returns."

According to Department records, the original audit report for 1988 – 1990 was completed on October 19, 1992. The supplemental audit report was completed on February 23, 1995.

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). Taxpayer has not established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-980278.LOF

LETTER OF FINDINGS NUMBER: 98-0278
Sales and Use Tax
For The Period: 1994-1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax: Wheel Loader and Front End Loader

Authority: 45 IAC 15-5-3; North Central Industries, Inc. v. Ind. Dept. of State Revenue, 790 N.E.2d 198, 200 (Ind. Tax Ct. 2003); Department of Revenue v. Calcar Quarries, Inc., 394 N.E.2d 939 (Ind. Ct. App., First District 1979); Indiana Dept. of State Revenue

v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983); 45 IAC 2.2-5-9; 45 IAC 2.2-5 *et seq.*

The taxpayer protests the imposition of tax on a wheel loader and a front-end loader.

II. Sales/Use Tax: Rough Terrain Crane

Authority: 45 IAC 2.2-5-8(h)(1)

The taxpayer protests the taxation of a rough terrain crane.

III. Sales/Use Tax: Calcium Chloride

Authority: IC 6-2.5-5-30; 45 IAC 2.2-5-70

The taxpayer protests the taxation of calcium chloride.

IV. Sales/Use Tax: Computer Equipment

Authority: 45 IAC 2.2-3-4; IC 6-8.1-5-1(b)

The taxpayer protests the taxation of computer equipment and various other items.

V. Sales/Use Tax: Public Transportation

Authority: IC 6-2.5-5-27; Carnahan Grain, Inc. v. Ind. Dept. of State Revenue, 2005 Ind. Tax LEXIS 29 (Ind. Tax Ct. 2005); Department of Revenue v. Calcar Quarries, Inc., 394 N.E.2d 939 (Ind. Ct. App., First District 1979)

Taxpayer protests that it qualifies for the public transportation exemption.

VI. Tax Administration: Penalty and Interest

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2; IC 6-8.1-10-1(e)

Taxpayer protests the imposition of the 10% negligence penalty and interest.

STATEMENT OF FACTS

The taxpayer's business involves mining, extraction, production, sale and hauling of sand, gravel and stone. The taxpayer characterizes its business as the processing and selling of "sand, stone, gravel and other similar materials (aggregates)…." The taxpayer's facilities "are primarily quarrying operations where aggregates are extracted, crushed, graded and staged for ultimate sale …." More facts will be provided as needed.

I. Sales/Use Tax: Wheel Loader and Front End Loader

DISCUSSION

Before examining the taxpayer's protest, it should be noted "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer.…" 45 IAC 15-5-3. The Indiana Tax Court has also stated: "When a taxpayer claims entitlement to a tax exemption, the taxpayer bears the burden of showing that the terms of the exemption are met." North Central Industries, Inc. v. Ind. Dept. of State Revenue, 790 N.E.2d 198, 200 (Ind. Tax Ct. 2003)(*Citing* Mid-America Energy Resources, Inc. v. Indiana Dept. of State Revenue, 681 N.E.2d 259, 261 (Ind. Tax Ct. 1997)).

Turning to the taxpayer's argument, initially the protest involved three items and the penalty: a wheel loader; a front-end loader; and a rough terrain crane. Although the taxpayer had originally stated that it was protesting the above listed items and was "in agreement with the remainder of the proposed assessment," the taxpayer later expanded the protest. The taxpayer also later disagreed with the "method of sampling" that was used in the audit.

First we will examine the wheel loader and the front-end loader.

Kawasaki Wheel Loader:

The taxpayer states: "This loader is used to place aggregate material into the processing plant at our recycle operation. We believe that the 'production process' begins at the loading of material for processing."

CAT 980G Front End Loader:

Again, quoting the taxpayer: "This loader is also used to place aggregate material into the processing plant at our recycle operation. We believe that the 'production process' begins at the loading of material for processing."

Among the cases that the taxpayer cites to support its position is Department of Revenue v. Calcar Quarries, Inc., 394 N.E.2d 939 (Ind. Ct. App., First District 1979). Calcar involved a "stone quarry, a hot mix asphalt plant, and a ready mix concrete facility" and various items that Calcar claimed were tax exempt. Id. at 940. The Court of Appeals noted that the trial court found the following:

> That a Caterpillar tractor with *front-end loader*…was used for the purpose of hauling stone in the various stages of production, and that the use of said Caterpillar tractor with *front-end loader* was for the transportation of unfinished work in process in a continuous flow from one production step to another within Calcar's integrated operation. (*Emphasis added*)

Id. at 942. The trial court further found that "the older tractor with front-end loader, for which parts and supplies were purchased" was "used directly to transport unfinished work in process in a continuous flow from one production step to another within Calcar's integrated operations." Id. at 942-3. The Court of Appeals held that "the trial court did not err in finding that the … tractor-loaders were used primarily for the purpose of transporting unfinished work in process from one production step to another." Id. at 943. The Court of Appeals went on to say "the trial court was correct in permitting exemptions for the amounts paid for purchase and repair of these items because they were directly used in direct processing and production." Id. at 943. However, the Court of Appeals in Calcar found that a crane used for "constructing its [Calcar's] asphalt plant" was "[o]bviously, … not a direct use in the direct production of the asphalt" and that a "payloader" that was "used solely for cleaning and maintenance purposes" also was "not

a direct use in the direct production or processing of Calcar's products." Id. at 943.

In Indiana Dept. of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983), the Indiana Supreme Court dealt with "facts very similar" to those in Calcar. The Indiana Supreme Court stated, "We believe that the rationale of the First District in *Calcar* is correct." Id. at 525.

The taxpayer has several locations/facilities. Among those are portable recycling plants, where the Kawasaki Wheel Loader and the CAT 980G Front End Loader are used. At hearing taxpayer stated the recycling plants involve the following: when roads are replaced, the government trucks the broken up road (asphalt/concrete) to the taxpayer's recycling plant to process the broken up road. The broken up road is processed to make concrete again.

The main question is *when* does production begin. For example, under 45 IAC 2.2-5-9 equipment like front-end loaders can be exempt depending on how and when the equipment is used. 45 IAC 2.2-5-9(a) states that, "In general, all purchases of tangible personal property by persons engaged in extraction or mining are taxable. The exemption provided in this regulation extends only to manufacturing machinery, tools, and equipment directly used in mining or extraction." The IAC goes on to illustrate the exempt versus taxable distinction: for example, front-end loaders "used to transport coal from a crusher to a wash plant are exempt" and "[f]ront-end loaders … used to load coal onto trucks, railroad cars, or barges for delivery to customers are taxable." 45 IAC 2.2-5-9(g).

From the facts provided by the taxpayer about the recycling operation, it is not entirely clear whether the road is already broken up by the government, or whether the taxpayer does the breaking up of the road. But neither scenario fulfills the "integrated production process" of the Indiana Administrative Code, since there is not what 45 IAC 2.2-5-9(c)(3) calls [by using coal as its example] a "functional interrelationship of the various steps and the flow of the work in process…." This is seen by the fact that if the government breaks up the road there is no functional interrelationship between the government seeking to break up old road (for whatever purpose) and the taxpayer reclaiming that broken up road. And if the taxpayer breaks up the road for the government, then a *service* is being performed by the taxpayer for the governmental entity. Thus the recycling operation is dissimilar, initially, from the integrated production steps of a quarry. Therefore the Kawasaki Wheel Loader and the CAT 980G Front End Loader are taxable, with, as the auditor put it, "The recycling operation" beginning "when materials are loaded into the plant and ends at the point that the production has altered the item to its completed form."

FINDING

The taxpayer is denied regarding its protest of the Kawasaki Wheel Loader and the CAT 980G Front End Loader.

II. Sales/Use Tax: Rough Terrain Crane

DISCUSSION

The taxpayer describes the "rough terrain crane" thusly: "The proposed assessment appears to be taxing this crane as a repair part or tool. The crane is neither a repair part or tool—it is a necessary piece of equipment used to access the processing plant for making adjustments to production equipment and facilities. This crane is in constant use and should be considered processing equipment." And in another piece of correspondence, "The Crane … was not used for constructing the plant which was already in operation. The crane was used for plant screen changes, plant repair, mobile equipment engine removals and replacements, etc."

45 IAC 2.2-5-8(h)(1) states in part:

Machinery, tools, and equipment used in the normal repair and maintenance of machinery used in the production process which are predominantly used to maintain production machinery are subject to tax.

(45 IAC 2.2-5-9(h)(1) and 45 IAC 2.2-5-10(h)(1) also have similar language).

The use of a crane for "screen changes" and "plant repair" comes within the ambit of 45 IAC 2.2-5-8(h)(1).

FINDING

The taxpayer is denied regarding its protest of the rough terrain crane.

III. Sales/Use Tax: Calcium Chloride

DISCUSSION

The auditor noted that the taxpayer applied calcium chloride "to road surfaces in plant locations and mines to reduce the airborne dust. The purpose includes the need to comply with standards of government environmental agencies."

The taxpayer states:

The calcium chloride was used in the operation of a facility, namely the quarry. The road beds had to be sprayed with the chloride to meet the government environmental requirements.

And further stated "[t]he calcium required to maintain dust control on the road beds is clearly an essential material consumed in the integrated production process."

Indiana Code 6-2.5-5-30 provides an exemption for environmental quality compliance, which states in part:

Sales of tangible personal property are exempt from the state gross retail tax if:

(1) the property constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominantly used and acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards; and

(2) the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, or agriculture.

The Auditor stated that the "calcium chloride is not subject to this exemption because the chemical is not *consumed* in the operation of a device, but continues on the ground to control dust and is dissipated over a period of time after the chemical has been released." (*Emphasis added*).

45 IAC 2.2-5-70(b) states in part that "Consumed," means "the dissipation or expenditure by combustion, use or application…." Thus, from what the Auditor stated, the calcium chloride "dissipates over a period of time" and is not dissipated in the "combustion, use or application."

The calcium chloride does not meet the requirements of the IC 6-2.5-5-30(1) and 45 IAC 2.2-5-70(b).

FINDING

The taxpayer is denied with regards to the calcium chloride.

IV. Sales/Use Tax: Computer Equipment and Various Other Items

DISCUSSION

The taxpayer also challenges the auditor's assessment of computer equipment:

The Agent assessed tax on all computer equipment purchased for use in Indiana. There was no attempt to determine the ultimate use of those computers, many of which are used to operate the crushers, conveyor lines, washers and radial stackers.

The auditor taxed the computer equipment per 45 IAC 2.2-3-4. Under 45 IAC 2.2-5-8, computer equipment can be exempt, but it is a fact-sensitive analysis. Taxpayer has failed to meet the burden of proof (*See* IC 6-8.1-5-1(b)) of demonstrating that the computer equipment is exempt under 45 IAC 2.2-5-8.

The taxpayer argues that the auditor "negotiated various percentages of taxable portions of loaders, supplies used in production, and certain other purchases with plant and quarry personnel after informing them of his interpretation of the administrative rules…." and "[t]hus, he had a direct influence on the plant personnel's determination of the exempt or taxable portion of the expense items." Taxpayer offers no basis for the numbers and percentages that it offered up to replace those "negotiated" percentages. Additionally, the taxpayer disagreed with the sampling method. The file contains projection methods that were signed and agreed to by the taxpayer at the time of the audit. The taxpayer, at hearing, listed various items that it either agreed or disagreed with the auditor on. The taxpayer then offered proposed taxable percentages for some of the items, but as with the computer equipment, the taxpayer has failed to develop its argument and meet its burden of proof.

FINDING

The taxpayer's protest is denied regarding the computer equipment. The taxpayer is also denied regarding the various items for which the taxpayer offered "new" taxable percentages, and is denied regarding its protest of the sampling method.

V. Sales/Use Tax: Public Transportation

DISCUSSION

Indiana Code 6-2.5-5-27 states that:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

An Indiana Tax Court case has also recently dealt with IC 6-2.5-5-27. In Carnahan Grain, Inc. v. Ind. Dept. of State Revenue, 2005 Ind. Tax LEXIS 29 (Ind. Tax Ct. 2005), the Indiana Tax Court explained that the Tax Court's prior public transportation case—Panhandle Eastern Pipeline Co. v. Indiana Dept. of State Revenue, 741 N.E.2d 816 (Ind. Tax Ct. 2001)—"rested entirely on Panhandle's use of the property." Carnahan at *8. The Indiana Tax Court went to hold in Carnahan that "because Carnahan predominantly used the property at issue for transporting agricultural commodities owned by third parties, it is entitled to the public transportation exemption." Carnahan at *11.

Turning to the argument, the auditor states that the taxpayer bought a trucking company "and began using the trucks primarily to haul aggregates that it sold to customers." The auditor noted:

The taxpayer does not qualify for the exemption allowed for property used in public transportation of property because the taxpayer is predominantly transporting property that is owned by the taxpayer until delivery to the customer has been completed.

Taxpayer likewise notes that it "acquired a small fleet of trucks … and since that time has been using these vehicles to transport aggregates products to customers." The taxpayer states:

It is the business', as well as industry, practice to quote the sales price of aggregate products to customers with shipping terms "F.O.B. our Plant." With these terms, the decision of how to transport the product rests with the customer. Generally speaking, it is the customer's option of how product is delivered to his premises—he can arrange his own transportation, using either his own fleet or by hiring a third-party common carrier or by having [Taxpayer] perform these services.

The business' practice since its acquisition of the [Trucking company] assets … has been to charge sales tax to customers on the sales price of the aggregates product at the point of sale (plant). [Taxpayer] added transportation charges when these services were provided and separately stated these fees on the invoice from the sales price of the product.

And finally,

…the typical shipping terms that are customary to the taxpayer and this industry are "F.O.B. origin". Therefore, the title to the goods and risk of the loss pass to the customer while the goods are at the premises of the seller.

The taxpayer relies on Department of Revenue v. Calcar Quarries, Inc. to buttress its argument. In Calcar the Court of Appeals noted:

The State contends that Calcar was not engaged in public transportation but instead was engaged primarily in the service of hauling its own product.

Calcar Quarries, Inc., 394 N.E.2d 939, 941. Calcar, it should be noted, "sold its products F.O.B. Calcar's plant." Id. at 941. The Court of Appeals stated that "[t]he evidence proves that Calcar, … transported property for consideration by highway and satisfied the State's definition of 'public transportation.'" Id. at 941.

The Auditor quotes IC 26-1-2-401: "Unless otherwise *explicitly* agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, …." (*Emphasis added*) However, "F.O.B. Our Plant," amounts to an *explicit* term.

Finally, the taxpayer provided a letter and documents with "two asset listings, one in which the truck division hauled primarily [taxpayer's] sales and the other one in which 80% was public transportation."

FINDING

Taxpayer's protest is sustained.

VI. Tax Administration: Penalty and Interest

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty. The Indiana Code section 6-8.1-10-2.1 imposes a penalty if the tax deficiency was due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2(b) states that negligence is "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

Subsection (d) of IC 6-8.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency "was due to reasonable cause and not due to willful neglect…." To establish this the "taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...." 45 IAC 15-11-2(c).

Taxpayer argues that the penalty should be abated. The taxpayer notes that it has "practiced a best effort policy and tried to be a compliant taxpayer…." The taxpayer also states that it "paid use tax every quarter…."

Given the fact-sensitive analysis required in reaching the various findings herein, and the taxpayer's efforts to be compliant, the taxpayer is sustained regarding the penalty. Regarding interest, IC 6-8.1-10-1(e) states the Department "may not waive the interest imposed under this section."

FINDING

The taxpayer is sustained regarding the penalty; the taxpayer is denied regarding interest.

DEPARTMENT OF STATE REVENUE

0220010344.LOF

LETTER OF FINDINGS NUMBER: 01-0344
Income Tax
For Tax Year 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments, ten percent (10%) negligence penalty and interest. Taxpayer protests the imposition of penalty. Further facts will be provided as necessary.

I. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent (10%) negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

…

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

…

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). As explained in the audit report gross income tax is due on partnership distributions. Taxpayer has not provided an explanation as to why it did not report this distribution. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010345.LOF

LETTER OF FINDINGS NUMBER: 01-0345
Income Tax
For Tax 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. Tax Administration—Negligence Penalty and Underpayment Penalty

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments, ten percent (10%) negligence penalty and interest. The Department also imposed a ten percent (10%) underpayment penalty. Taxpayer protests the imposition of penalty. Further facts will be provided as necessary.

I. Tax Administration—Negligence Penalty and Underpayment Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent (10%) negligence penalty for the tax years in question, as well as a ten percent (10%) underpayment penalty for a 1998 quarterly estimated tax payment. Taxpayer protests the imposition of both penalties. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

…

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

…

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). In its protest letter, taxpayer states that it exercised ordinary business care and prudence in filing income tax returns with Indiana. Also in its protest letter, taxpayer states that it was not required to file an estimated quarterly return and so should not have to pay a penalty for failure to file an estimated quarterly return. Since the Department issued assessments for unpaid tax, and taxpayer has not protested the assessments except for the penalties, it stands to reason that taxpayer failed both to exercise reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer and that taxpayer was required to file estimated quarterly returns. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010346.LOF

LETTER OF FINDINGS NUMBER: 01-0346
Income
For Tax Years 1995-98

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax—Partnership Distributions

Authority: First National Leasing and Financial Corp. v. Indiana Department of State Revenue, 598 N.E.2d 640 (Ind. Tax 1992); 45 IAC 1.1-1-3; 45 IAC 1.1-2-13; Black's Law Dictionary, 6th Ed., 928 (West Publishing 1990)

Taxpayer protests imposition of gross income tax on partnership distributions.

II. Tax Administration—Non-Filing Penalty

Authority: IC 6-8.1-10-3

Taxpayer protests imposition of a twenty percent (20%) non-filing penalty.

STATEMENT OF FACTS

Taxpayer is a limited partner in a cable television company doing business in Indiana. As the result of an audit, the Indiana Department of State Revenue ("Department") issued proposed assessments for income tax for the tax years 1995 through 1998. Taxpayer disagreed with the proposed assessments and filed a protest. Further facts will be supplied as required.

I. Gross Income Tax—Partnership Distributions

DISCUSSION

Taxpayer protests the proposed gross income tax assessments for the tax years 1995 through 1998. The Department issued the proposed assessments based on income taxpayer received as partnership distributions. Taxpayer states that it had no business situs in Indiana and therefore could not be subject to gross income tax.

In support of its position that taxpayer did have an Indiana business situs, the Department refers to 45 IAC 1.1-1-3, which states in relevant part:

(a) A "business situs" arises where possession and control of a property right have been localized in some business or

investment activity away from the owner's domicile.

(b) A taxpayer may establish a business situs in ways, including, but not limited to, the following:

…

(7) Ownership (in whole or part) of a partnership doing business in Indiana unless the ownership is that of a limited partner who does not participate in the control of the business.

….

In the audit report, the Department notes that taxpayer's corporate officers are the same corporate officers of the general partner and both other limited partners, and that these officers are also officers of the parent corporation which indirectly owns one hundred percent (100%) of the partnership.

The Department states in the audit report that taxpayer does not meet the definition of a limited partner, without providing a citation for the definition. The Department further states that taxpayer acquired the limited partnership interest from an affiliated corporation on paper only. Taxpayer's federal balance sheet as reported on its federal return shows that taxpayer has never had a bank account or owned any assets to invest in return for a partnership interest. The balance sheets on the federal return have never shown any balances in any asset, liability or capital accounts. Taxpayer's asset accounts on the balance sheet have never reflected the ownership of the partnership interest or any of the distributive share of the partnership's income in the taxpayer's capital account.

Taxpayer objects that this is due to errors in record keeping and that no definition for a limited partner appears in Indiana statutes, regulations, or case law. Taxpayer also states that the only place it could find any definition of "limited partner" was in an audit-gram dated after the audit period, and that even if it were to accept this definition, which it does not, the Department could not retroactively impose this definition on taxpayer. While the audit report does not provide a citation for the definition of "limited partner", such a definition is found in Black's Law Dictionary, which defines a "limited partner" as:

A person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement. Uniform Partnership Act, § 101. A partner whose liability to third party creditors of the partnership is limited to the amount invested by such partner in the partnership.

Black's Law Dictionary, 6th Ed., 928 (West Publishing 1990)

Also, a "Limited Partnership" is defined as:

Type of partnership comprised of one or more general partners who manage business and who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in profits but who take no part in running business and incur no liability with respect to partnership obligations beyond contribution.

Id.

As explained in the audit report, there was no amount invested by taxpayer for its share of the partnership. As explained in Black's, a "limited partnership" has limited partners who contribute capital. Taxpayer has not demonstrated that it contributed any form of capital. Therefore, taxpayer does not qualify as a limited partner, and 45 IAC 1.1-1-3(b)(7) provides that partnership interests qualify as a business situs. Also, taxpayer has not established that it does not participate in the control of the business.

Taxpayer also refers to First National Leasing and Financial Corp. v. Indiana Department of State Revenue, 598 N.E.2d 640 (Ind. Tax 1992). In that case, First National Leasing leased train derailment equipment to Hulcher Corporation, a wholly owned subsidiary. The equipment was used to place railroad cars and locomotives back on the tracks after a derailment. The lessee had a base in Indiana at which it stored some of the leased equipment. The Court decided that the taxpayer did not owe Indiana income tax on the income from the leases in that case because First National Leasing (taxpayer-lessor) had no control over the equipment. As the Court explained:

The sole activity First National has in Indiana is ownership of equipment that is located in Bluffton independently of any direction, consent, or, often times, knowledge of First National. The critical transaction in this case is the leasing of property. First National executed its leases in Illinois and Texas, not Indiana. The leases were not negotiated in Indiana; and the lease payments are not made or received in Indiana. Consequently, none of First National's activities related to the lease contract itself are conducted in Indiana.

Id., at 644-5.

Regarding whether or not First National had a business situs in Indiana, the Court in First National Leasing explained:

Consequently, although First National owns the equipment that Hulcher leases, locates, and uses in Indiana and elsewhere, the activities related to the lease formation and execution and the purpose of the lease, the use and possession of the equipment are overwhelmingly in quantity and quality activities conducted by Hulcher, not First National. The court therefore finds that First National's ownership of equipment located in Indiana is an activity that is not more than minimal, but is remote and incidental to the lease transaction from which its income is derived. Ownership alone is therefore not the degree of activity contemplated by the Indiana gross income tax statute.

Id., at 645

Taxpayer believes that since it was not involved in the day to day operations of the Indiana cable operations, it holds the same position as First National in First National Leasing.

Taxpayer's position is not the same as First National. First National's income arose from leasing activities over which it had no control. First National's contact with Indiana was not by its own action, but rather by action taken by its lessee. In the instant case, taxpayer's income arises from partnership distributions. Taxpayer's contact with Indiana was entirely by its own action. Taxpayer knew that the partnership's activities were conducted solely within Indiana. The decision in First National Leasing does not support taxpayer's position.

Next, the Department refers to 45 IAC 1.1-2-13, which states in relevant part:

(a) As used in this section, "partner's distributive share" means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes.

(b) An amount credited to a corporate partner as its distributive share of partnership income, which is derived from sources within Indiana is subject to the gross income tax. An amount previously subjected to the gross income tax because it was included in the partner's distributive share but not actually distributed is not subject to the gross income tax again when it is actually distributed.

…

The Department assessed gross income tax on taxpayer's distributive share of partnership income derived from sources within Indiana. This is in accordance with 45 IAC 1.1-2-13(b).

In conclusion, the Indiana tax court's decision in First National Leasing does not support taxpayer's position. Taxpayer is a limited partner as defined in Black's Law Dictionary. The Department properly followed 45 IAC 1.1-2-13(b)(7) in determining that taxpayer had a business situs in Indiana. The Department properly assessed gross income tax on taxpayer's distributive share of partnership income derived from sources within Indiana under 45 IAC 1.1-2-13.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Non-Filing Penalty

DISCUSSION

Taxpayer protests the imposition of a twenty percent (20%) non-filing penalty. Taxpayer states that it acted reasonably and that it did not believe that it was required to file a return. The Department imposed the penalty pursuant to IC 6-8.1-10-3(b), which states:

If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20%) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

Since the Department prepared taxpayer's return, it imposed the penalty. The only requirements for this penalty are a taxpayer's failure to file a return and the preparation of a return for a taxpayer by the Department. Both of those conditions have been met in this case, therefore the penalty was properly imposed.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010347.LOF

LETTER OF FINDINGS NUMBER: 01-0347
Income
For Tax Years 1995-98

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax—Partnership Distributions

Authority: First National Leasing and Financial Corp. v. Indiana Department of State Revenue, 598 N.E.2d 640 (Ind. Tax 1992); 45 IAC 1.1-1-3; 45 IAC 1.1-2-13; Black's Law Dictionary, 6th Ed., 928 (West Publishing 1990)

Taxpayer protests imposition of gross income tax on partnership distributions.

II. Tax Administration—Non-Filing Penalty

Authority: IC 6-8.1-10-3

Taxpayer protests imposition of a twenty percent (20%) non-filing penalty.

STATEMENT OF FACTS

Taxpayer is a limited partner in a cable television company doing business in Indiana. As the result of an audit, the Indiana

Department of State Revenue ("Department") issued proposed assessments for income tax for the tax years 1995 through 1998. Taxpayer disagreed with the proposed assessments and filed a protest. Further facts will be supplied as required.

I. Gross Income Tax—Partnership Distributions

DISCUSSION

Taxpayer protests the proposed gross income tax assessments for the tax years 1995 through 1998. The Department issued the proposed assessments based on income taxpayer received as partnership distributions. Taxpayer states that it had no business situs in Indiana and therefore could not be subject to gross income tax.

In support of its position that taxpayer did have an Indiana business situs, the Department refers to 45 IAC 1.1-1-3, which states in relevant part:

> (a) A "business situs" arises where possession and control of a property right have been localized in some business or investment activity away from the owner's domicile.
>
> (b) A taxpayer may establish a business situs in ways, including, but not limited to, the following:
>
> …
>
> (7) Ownership (in whole or part) of a partnership doing business in Indiana unless the ownership is that of a limited partner who does not participate in the control of the business.
>
> ….

In the audit report, the Department notes that taxpayer's corporate officers are the same corporate officers of the general partner and both other limited partners, and that these officers are also officers of the parent corporation which indirectly owns one hundred percent (100%) of the partnership.

The Department states in the audit report that taxpayer does not meet the definition of a limited partner, without providing a citation for the definition. The Department further states that taxpayer acquired the limited partnership interest from an affiliated corporation on paper only. Taxpayer's federal balance sheet as reported on its federal return shows that taxpayer has never had a bank account or owned any assets to invest in return for a partnership interest. The balance sheets on the federal return have never shown any balances in any asset, liability or capital accounts. Taxpayer's asset accounts on the balance sheet have never reflected the ownership of the partnership interest or any of the distributive share of the partnership's income in the taxpayer's capital account.

Taxpayer objects that this is due to errors in record keeping and that no definition for a limited partner appears in Indiana statutes, regulations, or case law. Taxpayer also states that the only place it could find any definition of "limited partner" was in an audit-gram dated after the audit period, and that even if it were to accept this definition, which it does not, the Department could not retroactively impose this definition on taxpayer. While the audit report does not provide a citation for the definition of "limited partner", such a definition is found in Black's Law Dictionary, which defines a "limited partner" as:

> A person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement. Uniform Partnership Act, § 101. A partner whose liability to third party creditors of the partnership is limited to the amount invested by such partner in the partnership.
>
> Black's Law Dictionary, 6th Ed., 928 (West Publishing 1990)

Also, a "Limited Partnership" is defined as:

> Type of partnership comprised of one or more general partners who manage business and who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in profits but who take no part in running business and incur no liability with respect to partnership obligations beyond contribution.
>
> Id.

As explained in the audit report, there was no amount invested by taxpayer for its share of the partnership. As explained in Black's, a "limited partnership" has limited partners who contribute capital. Taxpayer has not demonstrated that it contributed any form of capital. Therefore, taxpayer does not qualify as a limited partner, and 45 IAC 1.1-1-3(b)(7) provides that partnership interests qualify as a business situs. Also, taxpayer has not established that it does not participate in the control of the business.

Taxpayer also refers to First National Leasing and Financial Corp. v. Indiana Department of State Revenue, 598 N.E.2d 640 (Ind. Tax 1992). In that case, First National Leasing leased train derailment equipment to Hulcher Corporation, a wholly owned subsidiary. The equipment was used to place railroad cars and locomotives back on the tracks after a derailment. The lessee had a base in Indiana at which it stored some of the leased equipment. The Court decided that the taxpayer did not owe Indiana income tax on the income from the leases in that case because First National Leasing (taxpayer-lessor) had no control over the equipment. As the Court explained:

> The sole activity First National has in Indiana is ownership of equipment that is located in Bluffton independently of any direction, consent, or, often times, knowledge of First National. The critical transaction in this case is the leasing of property. First National executed its leases in Illinois and Texas, not Indiana. The leases were not negotiated in Indiana; and the lease payments are not made or received in Indiana. Consequently, none of First National's activities related to the lease contract itself are conducted in Indiana.
>
> Id., at 644-5.

Regarding whether or not First National had a business situs in Indiana, the Court in First National Leasing explained:

Consequently, although First National owns the equipment that Hulcher leases, locates, and uses in Indiana and elsewhere, the activities related to the lease formation and execution and the purpose of the lease, the use and possession of the equipment are overwhelmingly in quantity and quality activities conducted by Hulcher, not First National. The court therefore finds that First National's ownership of equipment located in Indiana is an activity that is not more than minimal, but is remote and incidental to the lease transaction from which its income is derived. Ownership alone is therefore not the degree of activity contemplated by the Indiana gross income tax statute.

Id., at 645

Taxpayer believes that since it was not involved in the day to day operations of the Indiana cable operations, it holds the same position as First National in First National Leasing.

Taxpayer's position is not the same as First National. First National's income arose from leasing activities over which it had no control. First National's contact with Indiana was not by its own action, but rather by action taken by its lessee. In the instant case, taxpayer's income arises from partnership distributions. Taxpayer's contact with Indiana was entirely by its own action. Taxpayer knew that the partnership's activities were conducted solely within Indiana. The decision in First National Leasing does not support taxpayer's position.

Next, the Department refers to 45 IAC 1.1-2-13, which states in relevant part:

(a) As used in this section, "partner's distributive share" means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes.

(b) An amount credited to a corporate partner as its distributive share of partnership income, which is derived from sources within Indiana is subject to the gross income tax. An amount previously subjected to the gross income tax because it was included in the partner's distributive share but not actually distributed is not subject to the gross income tax again when it is actually distributed.

…

The Department assessed gross income tax on taxpayer's distributive share of partnership income derived from sources within Indiana. This is in accordance with 45 IAC 1.1-2-13(b).

In conclusion, the Indiana tax court's decision in First National Leasing does not support taxpayer's position. Taxpayer is a limited partner as defined in Black's Law Dictionary. The Department properly followed 45 IAC 1.1-2-13(b)(7) in determining that taxpayer had a business situs in Indiana. The Department properly assessed gross income tax on taxpayer's distributive share of partnership income derived from sources within Indiana under 45 IAC 1.1-2-13.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Non-Filing Penalty

DISCUSSION

Taxpayer protests the imposition of a twenty percent (20%) non-filing penalty. Taxpayer states that it acted reasonably and that it did not believe that it was required to file a return. The Department imposed the penalty pursuant to IC 6-8.1-10-3(b), which states:

If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20%) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

Since the Department prepared taxpayer's return, it imposed the penalty. The only requirements for this penalty are a taxpayer's failure to file a return and the preparation of a return for a taxpayer by the Department. Both of those conditions have been met in this case, therefore the penalty was properly imposed.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010348.LOF

LETTER OF FINDINGS NUMBER: 01-0348
Income Tax
For Tax Year 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments, ten percent (10%) negligence penalty and interest. Taxpayer protests the imposition of penalty. Further facts will be provided as necessary.

I. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent (10%) negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

…

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

…

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). As explained in the audit report, taxpayer deducted capital losses from a partnership in which it was a partner and determined that its partnership distributions were therefore zeroed out. The Department explained that gross income tax is due on partnership distributions and that there is no provision for the deduction of partnership losses from previous years against those partnership distributions. Taxpayer has not provided an explanation as to why it believed it was entitled to such a deduction. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010350.LOF

LETTER OF FINDINGS NUMBER: 01-0350
Income Tax
For Tax Years 1995-98

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—Partner's Distributive Share

Authority: 45 IAC 1.1-1-5; 45 IAC 1.1-2-13; IRC 704

Taxpayer protests removal of deductions from its partnership distributive share of gross income.

II. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is the general partner in a partnership which owns a cable television business operating wholly within Indiana. Taxpayer has no other business activity than owning the partnership interest. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for gross income tax. The assessments were partially based on the Department's adjustment to include taxpayer's distributive share of partnership income as reported on taxpayer's Federal returns. Taxpayer protests the adjustment. Further facts will be supplied as necessary.

DISCUSSION

I. Gross Income Tax—Partner's Distributive Share

Taxpayer protests the proposed assessments for the tax years in question. The Department adjusted taxpayer's Indiana income to include taxpayer's distributive share of partnership income as taxpayer reported on its Federal returns. Taxpayer had deducted contributions to the partnership from taxpayer's distributive share of partnership income. Taxpayer refers to 45 IAC 1.1-2-13, which states:

(a) As used in this section, "partner's distributive share" means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes.

(b) An amount credited to a corporate partner as its distributive share of partnership income, which is derived from sources within Indiana is subject to the gross income tax. An amount previously subjected to the gross income tax because it was included in the partner's distributive share but not actually distributed is not subject to the gross income tax again when it is distributed.

(c) For purposes of this subsection, all income of the partnership shall be considered business income. If a partnership does business in a state besides Indiana, a partner's distributive share of partnership income which is derived from sources within Indiana, for gross income tax purposes, shall be determined by multiplying the partner's distributive share by a fraction. The numerator of the fraction shall be the sum of:

(1) the property factor;
(2) the payroll factor; and
(3) the sales factor;

of the partnership. The denominator of the fraction shall be determined by the number of factors used. The property factor shall be determined under IC 6-3-2-2(c). The payroll factor shall be determined under IC 6-3-2-2(d). The sales factor shall be determined under IC 6-3-2-2(e) and IC 6-3-2-2(f).

(d) The amount credited to a corporate partner as its distributive share of partnership income which is derived from sources in Indiana is taxable at the high rate.

Also, taxpayer refers to 45 IAC 1.1-1-5, which states:

(a) "Constructive receipt" means an item of gross income which is not actually received by a taxpayer but is:

(1) credited to taxpayer;
(2) made available for the taxpayer's withdrawal;
(3) paid to another for the taxpayer's direct benefit; or
(4) income to which the taxpayer is entitled.

(b) The term includes, but is not limited to, the following:

(1) The partial or complete forgiveness of a debt.
(2) Payment of a taxpayer's obligations by a third party for the taxpayer's direct benefit. The assumption of an outstanding lien on equipment sold by the taxpayer is not a payment for the taxpayer's direct benefit.
(3) The sale, by a lender, of property pledged or assigned by the taxpayer as collateral for a loan.
(4) Amounts credited to a partner as its distributive share of partnership income.
(5) The amount of known liabilities discharged as a result of a sale or other disposition of property, and from which the taxpayer receives a direct benefit. For example, if a taxpayer sells a piece of equipment for five hundred thousand dollars, ($500,000) and uses part of the proceeds to pay off a two hundred thousand ($200,000) lien against the pieces of equipment, the amount received by the taxpayer for gross income tax purposes is five hundred thousand dollars ($500,000).

Next, taxpayer states that the Department must, under 45 IAC 1.1-2-13(a), follow Section 704 of the Internal Revenue Code (IRC) to determine the amount of the "partner's distributive share" at issue. Taxpayer refers to IRC subsection 704(d), which states:

A partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in a partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

Taxpayer states that this subsection allows for the deduction of losses from previous years against the corporate partner's current distributive share of partnership income, as a carryforward of the loss. That is not what IRC 704(d) provides. IRC 704(d) allows a

partner to claim partnership loss and limits the amount of loss which is allowed to be claimed. As the Department explained in its audit report, taxpayer deducted contributions it made to the partnership from its distributive share of partnership income. Taxpayer did not claim partnership losses, which is the focus of IRC 704(d), therefore IRC 704(d) does not support taxpayer's position.

Taxpayer also states that under relevant partnership concepts, an allocation has economic effect only if it affects the amounts the partners will receive over the life of the partnership, and that this is tracked through the partner's capital account. Taxpayer argues that where a negative capital balance exists for one or more partners to a partnership, the income tax concepts embodied in partnership tax law do not evidence a constructive receipt of gross income. Taxpayer fails to cite any Indiana or Federal statute, regulation or case to support this argument.

In conclusion, 45 IAC 1.1-2-13(a) establishes that "partner's distributive share" means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes. 45 IAC 1.1-2-13(b) provides that an amount credited to a corporate partner as its distributive share of partnership income, which is derived from sources within Indiana is subject to the gross income tax. Since IRC 704(d) does not provide for the deduction of contributions, as claimed by taxpayer, the Department was correct to remove those deductions from taxpayer's distributive share of partnership income.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty

The Department issued proposed assessments and the ten percent (10%) negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

…

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

…

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). In its protest letter, taxpayer states that it timely filed and timely paid all tax liabilities. Since the Department issued assessments for unpaid tax, and taxpayer paid the assessments except for the penalties, it stands to reason that taxpayer did not timely pay all tax liabilities. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010357.LOF

LETTER OF FINDINGS NUMBER: 01-0357
Income Tax
For Tax Year 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.

ISSUE

I. Income Tax—Income From Real Estate Sale

Authority: 45 IAC 1.1-2-4

Taxpayer protests the imposition of income tax on proceeds from the sale of real estate.

STATEMENT OF FACTS

Taxpayer is in the business of renting commercial real estate. Taxpayer has rental property in Indiana and several surrounding states. The property is rented to partnerships all in the same business. Taxpayer sold the property to the partnerships at cost at the end of 1997. Taxpayer filed a final return for 1997 and has been inactive since that time. The Indiana Department of Revenue ("Department") conducted an audit for tax years 1995, 1996 and 1997. As a result of this audit, the Department issued a proposed assessment for gross income tax on the proceeds from the sale of real estate located in Indiana in 1997. Taxpayer protested the assessment. Further facts will be supplied as necessary.

DISCUSSION

Taxpayer owned and sold real estate in Indiana. Taxpayer protested the imposition of gross income tax on the sale of real estate in Indiana. 45 IAC 1.1-2-4(a)(4)(B) explains that taxable gross income from the sale of real estate is subject to the high rate of tax. Since first filing its protest in this matter, taxpayer has decided not to further protest this assessment.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220020274.LOF

LETTER OF FINDINGS NUMBER: 02-0274
Income Tax
For Tax Years 1995-97

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income—Royalty Income

Authority: Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977); Hoosier Energy Rural Electric Cooperative, Inc. v. Indiana Department of State Revenue, 572 N.E.2d 481 (Ind. 1991); IC 6-2.1-3-3; 45 IAC 1-1-51; Aug. 6, 1982, U.S.-Austl. art. 12, paras. 1,2,3, T.I.A.S. 10773

Taxpayer protests imposition of gross income tax on royalties.

II. Adjusted Gross Income—Business/Nonbusiness Income

Authority: The May Department Store Company v. Indiana Department of State Revenue, 749 N.E.2d 651 (Ind. Tax 2001); 45 IAC 3.1-1-29; 45 IAC 3.1-1-30

Taxpayer protests the characterization of income as business income and the imposition of adjusted gross income tax on that income.

III. Adjusted Gross Income—Net Operating Loss

Authority: IC 6-3-2-2; IC 6-3-2-2.6

Taxpayer protests an adjustment to net operating loss calculations.

IV. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a multi-national business in the metal industry. The business is vertically integrated throughout the metal products industry. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for income tax for tax years 1996 and 1997, and a proposed refund for tax year 1995. Taxpayer protests some of these assessments as well as the refund. Further facts will be provided as required.

I. Gross Income—Royalty Income

DISCUSSION

Taxpayer protests the Department's assessment of gross income tax on royalty income taxpayer received from the licensing of

patented closure systems owned by an Indiana domiciled subsidiary. Some of the licensees are located in other states, while some are located in foreign countries. In the audit report, the Department referred to 45 IAC 1-1-51, which deals with the situs of intangibles and states in relevant part:

> The Department applies two tests in determining the taxability of income from intangibles. The term "intangible" or "intangible property" as used in IC 6-2-1-1(m) *[Repealed by P.L. 77-1981, SECTION 22.]*, means and 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.
>
> The first test is what may be termed the "business situs" of the taxpayer or the relationship of the income from the tangible to the business activity of the taxpayer in Indiana. If the intangible or the income derived therefrom forms an integral part of a business regularly conducted at a situs in Indiana, the total gross income derived from the sale, assignment, transfer or exchange of the rights comprising the intangible property, or from the transfer of ownership to another will be required to be reported for taxation under IC 6-2-1-1(m) [*Repealed by P.L. 77-1981, SECTION 22.]* at the higher rate under IC 6-2-1-3(g) *[Repealed by P.L. 77-1981, SECTION 22.]* The test of a "situs" has been defined in Regulation 6-2-1-1(m)(330) *[45 IAC 1-1-49]* and out-of-state business is discussed in Regulation 6-2-1-1(m)(340) *[45 IAC 1-1-50]*).
>
> Therefore, if a taxpayer has a "business situs" in Indiana, as defined by Regulation 6-2-1-1(m)(330) *[45 IAC 1-1-49]*), 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 purposes.
>
> In addition to the case where the owner of the intangible is doing business in Indiana and the intangibles form an integral part of such owner's business conducted at or through his "business situs" in Indiana, a taxpayer may also be liable for gross income tax from intangibles if he is deemed to have established a "commercial domicile" in Indiana. Thus the second test is what may be termed the "commercial domicile" of the taxpayer.
>
> A taxpayer may have many business situses, but has only one commercial domicile. Where that is located must be determined based on all of the facts. Generally speaking, a commercial domicile may be viewed as the location of the majority of all the taxpayer's activities or business. The commercial domicile may also be called the "nerve center" or "corporate center" of all the business functions of the taxpayer.
>
> If a taxpayer's commercial domicile is in Indiana, all of the income from intangibles will be taxed under IC 6-2-1-1(m) *[Repealed by P.L. 77-1981, SECTION 22.]* except that income which may be directly related to an integral part of a business regularly conducted at a "business situs" outside Indiana.
>
> …
>
> The taxability of royalty income from such sources as patents or copyrights is to be determined as other income from intangibles according to the tests outlined previously on the "business situs" of the taxpayer or the "commercial domicile" of the taxpayer. Examples of transactions in intangibles which are partially or wholly excluded from taxation are:
>
> …
>
> Sales which are totally nontaxable as transactions in interstate commerce
>
> ….

Taxpayer protests that the assessment of gross income violates several aspects of the United States Constitution, including the Commerce Clause, the Due Process Clause, the Foreign Commerce Clause, the Import-Export Clause and the Equal Protection Clause. Taxpayer refers to IC 6-2.1-3-3, which states:

> Gross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign country is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that income by the United States Constitution.

The Indiana Supreme Court has previously dealt with the interstate sale of intangibles and gross income tax consequences. In Hoosier Energy Rural Electric Cooperative, Inc. v. Indiana Department of State Revenue, 572 N.E.2d 481 (Ind. 1991), the Indiana domiciled and situsedtaxpayer had sold its rights to claim certain federal income tax benefits to two out-of-state companies via New York investment bankers. The Department assessed gross income tax on the income from the sale of the rights to the federal tax benefits. The taxpayer protested that there was insufficient nexus to Indiana, that the tax was not fairly apportioned, that the tax discriminated against interstate commerce in favor of local commerce and that the tax was not fairly related to the services provided by Indiana. The court explained:

> The intangible which was sold, federal income tax benefits, cannot exist separate and apart from the taxpayer and property which, with the aid of *IRC § 168(f)*, created the intangible. Therefore, the taxation of this sale complies with the first prong of the Complete Auto test.
>
> Id., at 485.
>
> Similarly, in the instant case, the rights to taxpayer's patents were licensed to the out-of-state licensees, but the intangible cannot

exist apart from the Indiana domiciled and sitused subsidiary. There is sufficient nexus to Indiana to justify the assessment of gross income tax.

Next, regarding fair apportionment of the tax, the court explains:

A tax by New York does not present a substantial or real risk of taxation in a constitutional sense. A tax by New York would not pass two of the Complete Auto tests. First, a New York tax on this sale of an intangible with a business situs in Indiana would not be fairly related to services provided by New York. Secondly, New York does not have sufficient nexus to the creation of the intangible to be able to tax its sale. Hoosier has not proven that this sale is exposed to any substantial risk of being taxed by New York or any other state. Therefore, we hold that the evidence supports the conclusion that the imposition of the tax at issue meets the apportionment requirement of Complete Auto.

Id., at 485.

In the instant case, a tax by another jurisdiction on the licensing of this intangible would not pass two of the Complete Auto tests. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977). Taxpayer's business situs is Indiana and a tax by another jurisdiction would not be fairly related to services provided by the other jurisdiction. As in Hoosier Energy, in this case no other jurisdiction has sufficient nexus to the creation of the intangible to be able to tax its sale.

Next, regarding possible discrimination against interstate commerce, the court in Hoosier Energy explained:

The state gross income tax does not discriminate against interstate commerce in favor of local commerce. As the Tax Court correctly found, there is nothing in the operation of the tax that places a greater burden on out-of-state taxpayers than is placed on in-state taxpayers.

Taxpayer refers to Convention Between the Government of the United States of America and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (hereafter "Convention"), Article 12, which states in relevant part:

(1) Royalties from sources in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such royalties may be taxed in the Contracting State in which they have their source, and according to the law of that State, but the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

(3) Paragraph (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State or performs independent personal services in that other State from a fixed base situated therein, and the property or rights giving rise to the royalties are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

….

Aug. 6, 1982, U.S.-Austl. art. 12, paras. 1,2,3, T.I.A.S. 10773

Taxpayer believes that this is evidence that, since a foreign jurisdiction may impose withholding taxes on royalties paid to the licensor outside that jurisdiction, the royalties are subject to tax both within and outside the United States. Taxpayer asserts that this situation results in the net tax imposed on foreign royalties being higher than the tax imposed on domestic royalties, resulting in discrimination against foreign commerce. As previously explained, the sources of the royalties are not in the other states or nations, but rather the source is the patents held in Indiana where taxpayer's subsidiary has a business situs and the intangible property sold via the licensing agreements forms an integral part of taxpayer's subsidiary's business activities in Indiana.

Next, addressing the issue of whether or not the tax fairly related to the services provided by the State, the court in Hoosier Energy explained:

Obviously, citizens of the State of Indiana are expected to contribute their fair share of the state tax burden which pays for the multitude of services provided to the citizens by the State. There was no evidence presented to the Tax Court which would in any way show that this tax is not fairly related to the services provided by the State. Therefore, this tax on this sale passes the fourth part of the Complete Auto test.

As previously explained, taxpayer's subsidiary has its business situs in Indiana, is commercially domiciled in Indiana, holds the patents in Indiana, and the licensing agreements subject themselves to Indiana law. The tax is fairly related to the services provided by the State.

In conclusion, the licensing agreements were the sale of intangibles as provided in 45 IAC 1-1-51. The Indiana Supreme Court has addressed the situation of income received from the sale of intangibles by an Indiana sitused and domiciled taxpayer. As explained in Hoosier Energy, since taxpayer's subsidiary is domiciled and sitused in Indiana there is no risk of multiple taxation in this case since taxes imposed by other jurisdictions would not pass the four-part test provided in Complete Auto. Here, there is sufficient nexus with Indiana, the tax is fairly apportioned, the tax does not discriminate against interstate commerce, and the tax is fairly related to services provided by the State.

FINDING

Taxpayer's protest is denied.

II. Adjusted Gross Income—Business/Nonbusiness Income

DISCUSSION

Taxpayer protests imposition of adjusted gross income tax on income it received from the sale of interests it held in three businesses. The sale was part of a restructuring of taxpayer's business. Taxpayer reported the income on its federal return but considered it nonbusiness income and allocated the income to its commercial domicile, the state of Pennsylvania. The Department reclassified the income as business income and imposed adjusted gross income tax according to the apportionment formula. Taxpayer protests the reclassification.

The Department explained that, while there was no Indiana relationship of any of the entities that were sold and all property was located in foreign countries, taxpayer formed the entities and sold them three days later. Also, taxpayer included the entities in taxpayer's consolidated federal filing group. The Department expressed that clearly the intent of the formation of the entities was to sell them. Since the entities were formed to sell the foreign interests, the Department considered the income from the sales to be business income.

In The May Department Store Company v. Indiana Department of State Revenue, 749 N.E.2d 651 (Ind. Tax 2001), the Indiana Tax Court determined that IC 6-3-1-20 provides for both a transactional test and a functional test in determining whether income is business or non-business in nature. Id. at 662-3.

The court looks to 45 IAC 3.1-1-29 and 30 for guidance in determining whether income is business or business income under the transactional test. These regulations state "... the critical element in determining whether income is 'business income' or 'nonbusiness income' is the identification of the transactions and activity which are the elements of a particular trade or business." Id. at 664. 45 IAC 3.1-1-30 lists several factors in making this determination. These include the nature of the taxpayer's trade or business; substantiality of the income derived from activities and relationship of income derived from activities to overall activities; frequency, number or continuity of the activities and transactions; length of time income producing property was owned; and taxpayer's purpose in acquiring and holding the property producing income. In May, the Court found that the transactional test was not met when a retailer sold a retailing division to a competitor because the taxpayer was not in the business of selling entire divisions. Id. at 664.

In the instant case, taxpayer held interests in the three foreign companies and transferred those interests to subsidiary corporations formed for the purpose of holding the interests. Three days later, the newly formed subsidiary corporations sold most of the interests to non-related third parties. The Department considered the three-day ownership indicative of taxpayer's intention to form the companies for the sole purpose of selling them. The Department considered the intent to sell the interests to be business activity.

The court in May, explained that the transactional test requires the identification of the transactions and activity which are the elements of a particular trade or business. Id., at 644. In this case the transactions were the sale of interests in foreign mining operations. Taxpayer has provided sufficient documentation to establish that the mining operations were not part of taxpayer's world-wide metal products operations. One example among many provided is the establishment that the ores mined at the various foreign sites were sold primarily to non-related parties, and the amounts of ore which were bought by taxpayer were paid for at fair market prices. While this alone is insufficient to make taxpayer's case, the extensive documentation provided establishes that such arms-length interactions were standard procedure between taxpayer and the foreign operations.

Taxpayer was in the business of producing metals and metal products. These are the elements of taxpayer's particular trade or business. Taxpayer sold the interests in arms-length foreign mining operations to non-related parties. This is the transaction at issue. Taxpayer here was in the business of producing and selling metal and metal products, not the business of selling ownership of arms-length interests. As provided in May, this does not pass the transactional test.

The functional test focuses on the property being disposed of by the taxpayer. Id. at 664. Specifically the functional test requires examining the relationship of the property at issue with the business operations of the taxpayer. Id. 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. at 664. The court in May defined "integral" as part or constituent component necessary or essential to complete the whole. Id. at 664-5. The court held that May's sale of one of its retailing division was not "necessary or essential" to May's regular trade or business because the sale was executed pursuant to a court order that benefited a competitor and not May. In essence, the court determined that because May was forced to sale the division in order to reduce its competitive advantage, the sale could not be integral to May's business operations. Therefore, the proceeds from the sale were not business income under the functional test.

As previously explained, in this case taxpayer has provided sufficient documentation to establish that it had arms-length relations with the foreign mining operations. The sales of the interests were neither necessary nor essential to complete the whole of taxpayer's whole business. While taxpayer was not forced to sell the interests, as was the case in May, the sales were not integral to taxpayer's operations. Since the sales and purchases of the metals and ores between the foreign interests and taxpayer were conducted at arms-length, taxpayer was not able to integrate the interests into its operations. Indeed, the foreign interests sold the bulk of their goods to non-related parties, which alone would make integration into taxpayer's operations unlikely. Therefore, as provided in May, the

sales of the interests do not pass the functional test.

Regarding the Department's concerns that taxpayer formed corporations for the specific purpose of selling the interests, in some circumstances this is a strong indication of business-related activity. However, intention to sell is not an absolute characterization of business income. In May the taxpayer intended to sell its property, yet the Court determined via the transactional test and the functional test that the income was nonbusiness in nature. In the instant case, application of the transactional test and the functional test shows that the income was nonbusiness in nature.

In conclusion, taxpayer has provided extensive and convincing documentation that the foreign interests were not integral components of its business. The sales of the interests were intentional, but this is not the sole determining factor. Under both the transactional test and the functional test, the income from the sales in this case are nonbusiness income and should be allocated to taxpayer's commercial domicile, not apportioned partially to Indiana.

FINDING

Taxpayer's protest is sustained.

III. Adjusted Gross Income—Net Operating Loss

DISCUSSION

Taxpayer protests the reduction of claimed net operating loss via the Department's add back of nonbusiness income and foreign dividends to taxpayer's Indiana adjusted gross income. Taxpayer states that there is no statutory basis for this adjustment. Also, pursuant to a settlement agreement between taxpayer and the Department covering the previous audit period, the amount of net operating loss was increased by several million dollars. Taxpayer wants this increase reflected in the net operating loss credited to it in the instant audit period.

The Department explained its actions in the audit report, which states that for CY 1993, taxpayer incurred a net operating loss. Part of this loss was carried back to CY 1990 in the prior audit. During the instant audit period, the balance of the loss was carried forward to CY 1995 where it was fully utilized. The calculation of the net operating loss for CY 1993 was calculated by including the IND AGI determined per the prior audit. Next all nonbusiness and foreign dividend income was added back. Then the RAR adjustment received for this year was included. This total was then multiplied by the apportionment percentage also determined in the prior audit. For CY 1996, taxpayer incurred a net operating loss. This loss was carried to CY 1995 where it too was fully utilized.

The relevant statute is IC 6-3-2-2.6, which deals with corporate net operating loss and adjusted gross income. IC 6-3-2-2.6 states:

(a) This section applies to a corporation or a nonresident person, for a particular tax year, if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 1 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, derived from sources within Indiana is the remainder determined under STEP FOUR of the following formula:

STEP ONE: Determine, in the manner prescribed in section 2 of this chapter, the taxpayer's adjusted gross income, for the taxable year, derived from sources within Indiana, as calculated without the deduction for net operating losses provided by Section 172 of the Internal Revenue Code.

STEP TWO: Determine, in the manner prescribed in subsection (b), the amount of the taxpayer's net operating losses that are deductible for the taxable year under Section 172 of the Internal Revenue Code, as adjusted to reflect the modifications required by IC 6-3-1-3.5, and that are derived from sources within Indiana.

STEP THREE: Enter the larger of zero (0) or the amount determined under STEP TWO.

STEP FOUR: Subtract the amount entered under STEP THREE from the amount determined under STEP ONE.

(b) For purposes of STEP TWO of subsection (a), the modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year during which each net operating loss was incurred. In addition, for purposes of STEP TWO of subsection (a), the amount of a taxpayer's net operating losses that are derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's income derived from sources within Indiana is determined, under section 2 of this chapter, for the same taxable year during which each loss was incurred. Also, for purposes of STEP TWO of subsection (a), the following procedures apply:

(1) The taxpayer's net operating loss for a particular taxable year shall be treated as a positive number.

(2) A modification that is to be added to federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a negative number.

(3) A modification that is to be subtracted from federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a positive number.

Taxpayer believes that Indiana cannot add back the nonbusiness income and foreign dividends under IC 6-3-2-2.6. Taxpayer states that nonbusiness income is allocated to its commercial domicile, not apportioned to Indiana. Taxpayer also states that Indiana is prohibited from taxing income of a foreign corporation under the apportionment procedures of IC 6-3-2-2(o).

Indiana is not taxing the nonbusiness income or the foreign dividends. These are deductions and exemptions which receive full credit where appropriate. In this case, Indiana has simply added those factors back in order to properly calculate a new deduction.

Taxpayer's approach would result in compounding deductions and exemptions upon one another. Taxpayer has not referenced any statute or regulation which requires the Department to do so. The amount of NOL will be increased as agreed to in the settlement agreement covering the prior audit period.

FINDING

Taxpayer's protest is denied regarding the method of calculating net operating loss and sustained regarding the increased amount of net operating loss as agreed to in the previous settlement agreement.

IV. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent (10%) negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

…

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

…

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has not established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

01-20020394.LOF

LETTER OF FINDINGS NUMBER: 02-0394
Adjusted Gross Income Tax—Business Income
Penalty—Request for Waiver
For Tax Years 1998 & 1999

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax—Business Income

Authority: IC § 6-8.1-5-1(b); IC § 6-3-2-1(a); IC § 6-3-2-2(a); 45 IAC 3.1-1-25; 45 IAC 3.1-1-29; 45 IAC 3.1-1-38

Taxpayer protested the proposed assessment of Indiana's adjusted gross income tax on income earned from doing business in the state of Indiana.

II. Penalty—Request for Waiver

Authority: IC § 6-8.1-10-2.1(a); 45 IAC 15-11-2(b)

Taxpayer requested a waiver of the 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer, a resident of Michigan, was a retailer of sports trading cards, collectibles, and other memorabilia; he also promoted

shows at shopping malls in Indiana and Michigan. Taxpayer solicited participation at the shows from other dealers and arranged for the use of display space within the malls with managers and/or landlords; he also arranged for the necessary insurance coverage for the shows. Taxpayer advertised the shows in local newspapers, prepared flyers and rented tables and chairs needed for the shows from rental companies. Taxpayer then collected rental fees from the dealers attending the shows for use of the tables and chairs. Taxpayer also participated in selling cards and memorabilia at the shows. Taxpayer's retail store was located in Michigan. He was the sole proprietor, and filed schedule C with his federal income tax returns to report all business income and expenses. Taxpayer failed to file Indiana income tax returns for business receipts from Indiana sources for the tax years at issue.

Taxpayer timely protested the proposed assessment. The Department attempted to contact taxpayer regarding facts supporting the protest, but all correspondence was returned unopened with a handwritten message indicating taxpayer had passed away. The file was then sent to the Appeals Section. The Hearing Officer made numerous attempts to contact the Power of Attorney (POA) of record, obtain a new POA form from the apparent new POA, and to contact taxpayer's widow. There were also numerous telephone calls between the Hearing Officer and the apparent new POA, attempting to obtain information to resolve the protest and/or schedule a hearing. The Hearing Officer made one final attempt to contact the apparent POA, giving a date certain by which to respond. The Department has received nothing to date. Additional facts will be supplied as necessary.

I. Adjusted Gross Income Tax—Business Income

DISCUSSION

Taxpayer protested the proposed assessment of Indiana's adjusted gross income tax on business receipts derived from Indiana sources.

Pursuant to IC § 6-8.1-5-1(b), an Indiana Department of Revenue "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." Despite numerous attempts to obtain information from taxpayer, his widow, and two Powers of Attorney (one of record, the other apparent), the Department has not received any information or facts on this protest. Therefore, this Letter of Findings is based on all materials contained in the file, plus all relevant Indiana tax statutes and regulations.

IC § 6-3-2-1(a) imposes the adjusted gross income tax "on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-2(a)(2) and (3) set forth a nonresident's adjusted gross income tax liability:

(a)With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

(2) income from doing business in this state;

(3) income from a trade or business in this state;

See also, 45 IAC 3.1-1-25.

Taxpayer, during the tax years at issue, received income from renting tables and chairs for use at Indiana sports memorabilia shows, and from selling his own merchandise at these shows. The audit indicates these shows were held at shopping malls in the following Indiana cities: Kokomo, Anderson, Muncie, Marion, Lafayette, and South Bend.

45 IAC 3.1-1-29 defines "business income" as "income from transactions and activity in the regular course of the taxpayer's trade or business." 45 IAC 3.1-1-38 provides in pertinent part:

Sec. 38. Doing Business. For apportionment purposes, a taxpayer is "doing business" in a state if it operates a business enterprise or activity in such state including, but not limited to:

(1) Maintenance of an office or other place of business in the state

(2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods

(3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution

(4) Rendering services to customers in the state

(5) Ownership, rental or operation of a business or of property (real or personal) in the state

(6) Acceptance of orders in the state

(7) Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under P.L.86-272 to tax its net income.

Taxpayer's regular trade or business activities in Indiana fall within the strictures of 45 IAC 3.1-1-38. Taxpayer brought merchandise into the state and sold it, rented the tables and chairs and collected fees from other dealers who also sold their merchandise at these sports memorabilia shows. Therefore, any income taxpayer earned from his Indiana activities should have been reported to the state of Indiana via Indiana tax returns.

The audit determined, based on the best information available, taxpayer's adjusted gross income tax liability from taxpayer's federal returns for the tax years at issue because taxpayer had failed to file Indiana tax returns for income earned from conducting sports memorabilia shows in Indiana. Neither taxpayer nor his representatives have supplied any facts to contradict the proposed assessment. While taxpayer is apparently deceased, outstanding tax liabilities remain.

FINDING

Taxpayer's protest concerning the proposed assessment of Indiana's adjusted gross income tax on income earned from doing

business in the state of Indiana is denied.

II. Penalty—Request for waiver

DISCUSSION

Taxpayer protested the imposition of the 10% negligence penalty on the entire assessment. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due. Taxpayer's representative stated in the Letter of Protest and at the hearing that taxpayer relied on the information obtained from the Indiana Bureau of Motor Vehicles, and that the failure to pay the proper amount of tax was due to that state agency's interpretation of Indiana's statutes, regulations, and case law.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, waiver of the penalty on the entire assessment is inappropriate in this particular instance.

FINDING

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

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0420030021.LOF

LETTERS OF FINDINGS NUMBERS: 03-0147& 03-0021
Gross Retail Tax-Calculation
Gross Retail Tax-Oil Changes
Withholding Tax-Payment Application
Penalty-Request for Waiver
For Years 1999, 2000, 2001

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail Tax—Calculation

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-6-8

Taxpayer protests the audit's calculation of gross retail taxes owed on sales of gasoline.

II. Gross Retail Tax—Oil changes

Authority: IC § 6-8.1-5-1(b)

Taxpayer protests the audit's assessment of gross retail tax on items used in oil changes, arguing that the audit's reliance on a single invoice does not support taxpayer's alleged failure to collect and remit the tax.

III. Withholding Tax—Payment application

Authority: IC § 6-8.1-8-1.5; 45 IAC 15-8-1

IV. Penalty—Request for waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the 10% negligence penalty and requests a waiver.

STATEMENT OF FACTS

Taxpayer is an Indiana S-corporation, selling gasoline, snacks, beverages, and performing repair work on customers' cars—engines, brakes, shocks, and suspensions. Taxpayer also does oil changes. Additional facts will be supplied as required.

I. Gross Retail Tax—Calculation

DISCUSSION

The audit determined gross retail tax liability in two areas: the calculation of gross retail taxes due on sales of gasoline and the assessment on the sale of parts used during oil changes on customers' vehicles. Taxpayer protested both items as well as a withholding liability payment that taxpayer stated was incorrectly applied. Each protested item will be taken up in order.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1.

According to the audit, in connection with the calculation used to arrive at taxpayer's gross retail tax liability for gasoline sales, taxpayer incorrectly claimed a credit of prepaid sales tax on the amount of fuel he sold, not the amount of fuel he purchased. In order to verify the amount of taxpayer's tax liability, the audit completed worksheets that were designed to follow the ST-103MP, the sales tax return required by the Department for entities such as taxpayer. The audit used numbers found in taxpayer's profit and loss statements and verifications of prepaid tax paid at the point of purchase. The audit then determined that the difference was taxable pursuant to 45 IAC 2.2-6-8, **not pursuant** to the rate specified on the ST-103MP. Consequently, taxpayer has incurred a substantial gross retail tax liability for sales during the audit years at issue.

At the hearing on taxpayer's protest, with respect to this issue, taxpayer and his representative walked the hearing officer through how taxpayer figured out his actual tax liability. Taxpayer reconstituted the ST-103MP's, using the audit's own figures and multiplied them by the rate listed on the ST-103MP. In other words, he followed the directions on the form the Department requires for entities such as taxpayer. The audit did not accept taxpayer's reconstituted ST-103MP's.

Taxpayer and his representative stated at the hearing, by way of a complete walk through of a representative sample, and demonstrated, that the figures actually came from the audit worksheets. The Department concludes that taxpayer's reconstituted ST-103MP's, and the tax rate listed on that form, should be accepted, and taxpayer's gross retail tax on the gasoline should be recalculated accordingly.

FINDING

Taxpayer's protest concerning the calculation of gross retail taxes owed on gasoline sales is sustained subject to audit's recalculation.

II. Gross Retail Tax—Oil changes

DISCUSSION

The audit based taxpayer's entire gross retail tax liability on a single invoice which indicated sales tax was not collected on that particular work order. By the time the audit was completed, reviewed, assessments issued, a protest received and reviewed, and a hearing set, taxpayer's limited storage capacity revealed there were no paper invoices for the audit years at issue available to back up taxpayer's protest. Taxpayer keeps paper invoices for a limited period of time in case a customer disputes a particular work order. According to taxpayer, the audit had the opportunity to review computerized invoices during the audit, but chose not to. Taxpayer's storage software periodically purges these files. The audit computed a best information available percentage, "based on a review of similar industries charging the same amount for oil changes," found in an industrial standards textbook; however, the audit did not take into account taxpayer's size, location, or the facility's age. Taxpayer's place of business is decades old, small, out-of-the-way, and nothing like a BP Connect platform/plaza facility. The audit stated no invoices were available to review for the audit years at issue, but that taxpayer had invoices for years prior to the audit years.

It appears that the audit's determination of gross retail tax liability on materials used in oil changes is arbitrary and capricious, based on very little reliable evidence. On the other hand, taxpayer no longer has the documentation to support the lack of liability.

FINDING

Taxpayer's protest concerning the gross retail tax assessment on materials used in oil changes is denied.

III. Withholding Tax—Payment application

DISCUSSION

Taxpayer's protest on this issue focuses on the fact that the payment was applied to two prior, outstanding liabilities. And not to the 1999 withholding liability, the reason taxpayer wrote the check.

Pursuant to IC § 6-8.1-8-1.5, the department applies payments in the following order:

(1) To any penalty owed by the taxpayer.

(2) To any interest owed by the taxpayer.

To the tax liability of the taxpayer.

See also, 45 IAC 15-8-1.

When taxpayer tendered his check to the Department in 2000 to pay the 1999 withholding liability, the Revenue Processing

System showed two older outstanding liabilities. Therefore, pursuant to department policy, the 2000 payment was applied to an open December 1995 Gross Retail Sales Tax liability and to an open 1998 Withholding Tax liability. Therefore, the 1999 withholding tax liability is still open.

FINDING

Taxpayer's protest concerning the perceived misapplication of the 2000 payment for the 1999 withholding tax liability is denied.

IV. Penalty—Request for waiver

DISCUSSION

Taxpayer protests the imposition of the 10% negligence penalty on the assessment.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, waiver of the 10% negligence penalty is not appropriate in this particular instance.

FINDING

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

0320030394.LOF

LETTER OF FINDINGS NUMBER: 03-0394
Gross Income Tax / Withholding Liability
For 1999, 2000, and 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

I. Withholding Gross Income Tax.

Authority: IC 6-2,1-2-2(a); IC 6-2,1-6-1; 45 IAC 1.1-5-8.

Taxpayer challenges an audit decision requiring it to withhold gross income tax on payments made to certain non-resident contractors.

II. Abatement of the Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer asks that the Department exercise its discretion to abate the ten-percent negligence penalty on the ground that taxpayer did not act with willful negligence or intentional disregard of Indiana's tax laws.

STATEMENT OF FACTS

Taxpayer operates a network of retail stores selling various types of merchandise. Taxpayer operates approximately 100 retail stores and distribution centers within the state.

The Department of Revenue (Department) conducted a sales and use tax audit review of taxpayer's business records and tax returns. During the course of that audit, a number of payments to vendors were reviewed to determine whether or not the payments were subject to the requirement to withhold Indiana gross income tax. The list of vendors was checked against the Indiana Secretary of State's records to determine if the vendors were registered to conduct business within the state. Thereafter, the taxpayer was provided a list of those vendors for which verification could not be made. Taxpayer was asked to provide documentation demonstrating that the payments to those vendors were not subject to the withholding tax. Taxpayer declined the opportunity to provide that documentation at the time the audit review was conducted.

The audit found that the payments to the non-resident contractors were subject to the withholding requirement. During June

of 2004, the Department sent taxpayer notices of "Proposed Assessment." Taxpayer submitted a protest challenging certain aspects of the proposed assessment. Taxpayer declined the opportunity to take part in an administrative hearing or to further explain the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Withholding Gross Income Tax.

Indiana formerly imposed an income tax, known as the gross income tax, upon the receipt of "the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." IC 6-2.1-2-2(a). Except as provided in IC 6-2.1-6-1, each calendar year, each individual, firm organization or governmental agency of any kind which made payments to a nonresident contractor for performance of any contract, except contracts for sale, was required to withhold from such payments the amount of gross income tax owed upon the receipt of those payments. IC 6-2.1-6-1.

The withholding requirement is further clarified at 45 IAC 1.1-5-8, in effect during the tax periods at issue. The regulation states in part as follows:

> For taxable years beginning after December 31, 1993, a withholding agent who is required to withhold gross income tax under IC 6-2.1-6-1 or IC 6-2.1-6-2 is required to file a return and pay the tax withheld to the department on April 20, June 20, September 20, and December 20 of each calendar year. The return shall show the amount withheld from the gross income paid to each taxpayer. (b) The withholding agent is not liable to a taxpayer for any amounts withheld and paid to the department in accordance with this section. (c) Gross income tax should not be withheld on the first one thousand dollars ($1,000) paid to a taxpayer during a taxable year. (d) The amount of gross income tax withheld shall be determined by applying the high rate of tax to the total amount of gross income without any deductions.

The audit review determined that taxpayer did not – but should have – withheld gross income tax on payments made to non-resident contractors during 1999, 2000, and 2001.

During 1999, the audit determined that taxpayer should have withheld gross income tax from payments made to six different contractors. The amount of withholding liability was approximately $68,800.

During 2000, the audit determined that taxpayer should have withheld gross income tax from payments made to four different contractors. The amount of withholding liability was approximately $164,000.

During 2001, the audit determined that taxpayer should have withheld gross income tax from payments made to four different contractors. The amount of withholding liability was approximately $189,600.

A. Withholding Liability.

The total amount of withholding liability for 1999, 2000, and 2001 was approximately $422,400.

In taxpayer's protest letters, taxpayer supplied the Indiana identification numbers for two of the contractors. Taxpayer paid for a portion of the outstanding withholding liability. To the extent that taxpayer has verified that certain of the contractors were registered to do business in Indiana and paid the gross income tax on the payments received from taxpayer, taxpayer's protest of the corresponding assessment is sustained.

To the extent that taxpayer has paid the remaining portion of the outstanding withholding liability, the issue is – of course – moot.

B. Interest.

Taxpayer requests that the interest assessed on the outstanding gross income / withholding liability be abated. IC 6-8.1-10-1(a) states that upon a taxpayer's failure to pay the full amount of tax due, the taxpayer "is subject to interest on the nonpayment." The taxpayer's request for abatement of the interest assessed is unavailing. The interest assessed for late payment under IC 6-8.1-10-1(a) is not subject to the Department's discretionary review. The statute simply states that upon finding a payment deficiency, the taxpayer "*is* subject to interest on the nonpayment." (*Emphasis added*). Absent the statutory or equitable authority to abate the interest properly imposed under IC 6-8.1-10-1(a), the Department must decline the taxpayer's invitation to do so.

FINDING

Taxpayer's protest is denied in part and sustained in part. To the extent that taxpayer has demonstrated that the contractors were registered to conduct business in Indiana, taxpayer's protest is sustained. To the extent taxpayer has paid a portion of the outstanding gross income / withholding liability, the issue is moot. Taxpayer's request to abate the amount of interest attributable to the unpaid gross income / withholding liability, taxpayer's protest is respectfully denied.

II. Abatement of the Ten-Percent Negligence Penalty.

Claiming that it exercised "prudence and ordinary care," taxpayer requests that the Department exercise its discretionary authority to abate the ten-percent penalty. Taxpayer claims that expansion of its business "provided new opportunities for employment of Alabama residents." Taxpayer also argues that since conclusion of the audit, it "initiated additional internal controls to promote proper reporting."

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) permits 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...."

During the most recent audit, taxpayer was asked verify that the contractors in question were registered to conduct business in Indiana and to verify that payments to these contractors were not subject to the gross income / withholding requirement; taxpayer declined the opportunity to do so. The gross income tax / withholding issue was addressed in a previous Indiana audit after which a Letter of Finding was issued supporting the Department's position. The Department must conclude that taxpayer's most recent failure to address its gross income / withholding responsibility does not represent the exercise of the "reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420030461.LOF
0220040135.LOF
0120040136.LOF

LETTER OF FINDINGS NUMBERS: 03-0461; 04-0135; 04-0136
Corporate Income Tax: Accounting Methods
For Tax Years 2000 & 2001

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Corporate Income Tax: Accounting Methods

Authority: IC § 6-3-1-3.5; IC § 6-3-2-2(a)(2); IRS Publication 538; 26 CFR § 1.451-5(b)

Taxpayer protests the audit's assessment of additional taxable corporate income, arguing that deposit amounts taken for items not in taxpayer's inventory were incorrectly included in the audit adjustment.

STATEMENT OF FACTS

Taxpayer, a subchapter S corporation, is a retailer of in-ground spas and hot tubs. Originally, taxpayer protested issues in three separate files. During the telephone hearing, taxpayer indicated two of the three protests had been resolved. Therefore, the sole issue still remaining is the one outlined *supra*: the audit assessment of additional taxable income. When a customer wishes to purchases a spa or hot tub not in taxpayer's inventory, taxpayer accepts an advance payment or deposit, orders the spa or hot tub from the manufacturer, and then delivers and installs the spa or hot tub, whereupon the taxpayer collects the remainder of the money owed. Taxpayer uses the accrual method of accounting in keeping his books, and for income reporting purposes. Additional facts will be supplied as required.

I. Corporate Income Tax: Accounting Methods

DISCUSSION

Taxpayer protests the audit assessment of additional taxable corporate income, arguing that deposit amounts were incorrectly included in the audit adjustment. Taxpayer uses the accrual method of accounting and argues that the deposits are not taxable until delivery is complete and services are performed. Taxpayer supports his argument by stating that since he uses the accrual method of accounting, any deposits customers make on spas and/or hot tubs that are not in his inventory and therefore must be ordered from the manufacturer are not taxable until the items are delivered and installation services are completed. The audit relied on Internal Revenue Service (IRS) Publication 538; the audit report provides in pertinent part:

IRS Publication 538 which states that an amount becomes part of gross income for the year in which all events that fix the merchant's right to receive the income have occurred and the amount owed can be reasonably determined. Under this rule, the amount is reported in gross income when the income amount is due the merchant. In this case the deposits are partial payments of the final agreed upon purchase price of the transaction.

Taxpayer contends that the corporation is reporting income under the accrual method of accounting and that the inclusion of deposits accepted as down payments on noninventory spas and hot tubs should not be included in gross receipts in the year the down payment is accepted because these advance payments are for items taxpayer orders from a manufacturer; they are not inventoried

goods. Taxpayer has reported income using the accrual method since 1997; both the state of Indiana and the federal taxation schemes allow taxpayers to use either the cash method of accounting, or the accrual method of accounting; both are correct, and, moreover, legal. Taxpayer's representative sent the auditor a letter setting forth his argument, stating there was no underreporting of income to the state of Indiana; it was merely a question of timing.

IC § 6-3-2-2 defines, at great length, the adjusted gross income tax. Subsection (a)(2) describes the income at issue in this protest: "income from doing business in this state." For purposes of Indiana's adjusted gross income tax, a taxpayer must begin with the federal income tax code's definition of "adjusted gross income," with certain add backs and deductions. *See* IC § 6-3-1-3.5.

IRS Publication 538 defines the accrual method of accounting as one where a taxpayer reports "income in the year earned and [deducts] or [capitalizes] expenses in the year incurred. The purposes of an accrual method of accounting is to match income and expenses in the correct year." The publication goes on to state:

> You generally include an amount as gross income for the tax year in which all events that fix your right to receive the income have occurred and you can determine the amount with reasonable accuracy. Under this rule, you report an amount in your gross income on the earliest of the following dates
> - When you receive payment
> - When the income amount is due you
> - When you earn the income

Until the transaction is complete, either through delivery and installation and payment, or default, taxpayer cannot determine income "with reasonable accuracy." Moreover, as the materials cited *supra* support, noninventory goods under the accrual method of accounting and reporting allow taxpayer a choice in the timing of reporting the income.

FINDING

Taxpayer's protest concerning the audit assessment of additional taxable corporate income, based on the accrual method of accounting for noninventoried goods, is sustained.

DEPARTMENT OF STATE REVENUE

0220040001.SLOF

SUPPLEMENTAL 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.

ISSUES

I. Adjusted Gross Income Tax-Combined Return

Authority: IC 6-3-2-2(m), IC 6-3-2-2(p), IC 6-8.1-5-1(b).

The taxpayer protests the combination of the taxpayer's Indiana adjusted gross income tax returns with affiliated corporations.

II. Adjusted Gross Income Tax- Foreign Source Dividend Deduction

Authority: IC 6-3-2-2.2(g).

The taxpayer protests the amount of the foreign source dividend deduction.

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. As a result of the audit, the department assessed additional gross income tax, adjusted gross income tax, interest and penalty against the taxpayer. A hearing was held and a Letter of Findings was issued on April 28, 2005. That Letter of Findings dealt with the gross income tax issues but not the adjusted gross income tax issues. A rehearing was requested and granted. Pursuant to the taxpayer's request, this Supplemental Letter of Findings is based on the documentation in the file.

I. Adjusted Gross Income Tax-Combined Return

DISCUSSION

In the audit, the department forced the taxpayer and its related corporations to file a combined Indiana adjusted gross income tax return instead of separate Indiana adjusted gross income tax returns pursuant to IC 6-3-2-2(m). The taxpayer protests this forced combination.

The taxpayer argues that pursuant to IC 6-3-2-2(p), the department cannot force combined Indiana adjusted gross income tax reporting unless the taxpayer's adjusted gross income cannot otherwise be fairly reflected. The taxpayer contends that since all of

the transactions between the taxpayers and its affiliates were at arms length rates, the separate adjusted gross income tax returns properly and fairly reflect the taxpayer's Indiana adjusted gross income and tax liability.

Pursuant to IC 6-8.1-5-1(b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. In this case, the taxpayer made allegations but offered no evidence to support those statements. Therefore, the taxpayer did not sustain its burden of proving that the department improperly combined the Indiana adjusted gross income tax returns.

FINDING

The taxpayer's protest is denied.

II. Adjusted Gross Income Tax- Foreign Source Dividend Deduction

DISCUSSION

The taxpayer contends that even if combination of Indiana adjusted gross income tax returns is allowed, an error was made in the calculation of the combined Indiana adjusted gross income tax. Specifically, the taxpayer contends that the department allowed less than the full amount of the foreign source dividend deduction under IC 6-3-2-1.1(g).

At the time of the audit, the taxpayer did not provide the department with a copy of the Consolidated Federal 1120 return, Schedule C. Consequently the department used the "Proforma" Federal 1120, Schedule C return which was provided. This proforma schedule did not include all of the companies included in the Unitary Group as determined by the department. Based on the information available at the time of the audit, the department allowed a deduction for Foreign Gross Up in the amount of $43,099,169 and a deduction for Foreign Dividend Expense in the amount of $58,754,225. On March 10, 2005, the taxpayer submitted a copy of the Consolidated Federal 1120, Schedule C to the department.

Upon review of the submitted documentation, the department finds that the correct amount of Gross Up which should be deducted is $48,049,662 (instead of $43,099,169). The correct amount of the Foreign Dividend Deduction which should be deducted is $197,106,158 (instead of $58,754,225).

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220040002.SLOF

SUPPLEMENTAL 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.

ISSUES

I. Adjusted Gross Income Tax-Combined Return

Authority: IC 6-3-2-2(m), IC 6-3-2-2(p), IC 6-8.1-5-1(b).

The taxpayer protests the combination of the taxpayer's Indiana adjusted gross income tax returns with affiliated corporations.

II. Adjusted Gross Income Tax- Foreign Source Dividend Deduction

Authority: IC 6-3-2-2.2(g).

The taxpayer protests the amount of the foreign source dividend deduction.

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. As a result of the audit, the department assessed additional gross income tax, adjusted gross income tax, interest and penalty against the taxpayer. A hearing was held and a Letter of Findings was issued on April 28, 2005. That Letter of Findings dealt with the gross income tax issues but not the adjusted gross income tax issues. A rehearing was requested and granted. Pursuant to the taxpayer's request, this Supplemental Letter of Findings is based on the documentation in the file.

I. Adjusted Gross Income Tax-Combined Return

DISCUSSION

In the audit, the department forced the taxpayer and its related corporations to file a combined Indiana adjusted gross income tax return instead of separate Indiana adjusted gross income tax returns pursuant to IC 6-3-2-2(m). The taxpayer protests this forced combination.

The taxpayer argues that pursuant to IC 6-3-2-2(p), the department cannot force combined Indiana adjusted gross income tax reporting unless the taxpayer's adjusted gross income cannot otherwise be fairly reflected. The taxpayer contends that since all of the transactions between the taxpayers and its affiliates were at arms length rates, the separate adjusted gross income tax returns properly and fairly reflect the taxpayer's Indiana adjusted gross income and tax liability.

Pursuant to IC 6-8.1-5-1(b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. In this case, the taxpayer made allegations but offered no evidence to support those statements. Therefore, the taxpayer did not sustain its burden of proving that the department improperly combined the Indiana adjusted gross income tax returns.

FINDING

The taxpayer's protest is denied.

II. Adjusted Gross Income Tax- Foreign Source Dividend Deduction

DISCUSSION

The taxpayer contends that even if combination of Indiana adjusted gross income tax returns is allowed, an error was made in the calculation of the combined Indiana adjusted gross income tax. Specifically, the taxpayer contends that the department allowed less than the full amount of the foreign source dividend deduction under IC 6-3-2-1.1(g).

At the time of the audit, the taxpayer did not provide the department with a copy of the Consolidated Federal 1120 return, Schedule C. Consequently the department used the "Proforma" Federal 1120, Schedule C return which was provided. This proforma schedule did not include all of the companies included in the Unitary Group as determined by the department. Based on the information available at the time of the audit, the department allowed a deduction for Foreign Gross Up in the amount of $43,099,169 and a deduction for Foreign Dividend Expense in the amount of $58,754,225. On March 10, 2005, the taxpayer submitted a copy of the Consolidated Federal 1120, Schedule C to the department.

Upon review of the submitted documentation, the department finds that the correct amount of Gross Up which should be deducted is $48,049,662 (instead of $43,099,169). The correct amount of the Foreign Dividend Deduction which should be deducted is $197,106,158 (instead of $58,754,225).

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

042004004.LOF

LETTER OF FINDINGS NUMBER: 04-0004
Use Tax for the Years 2000 - 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax—Equipment used to provide services

Authority: IC 6-8.1-5-1(b); IC 6-2.5-5 *et seq*.

Taxpayer protests the imposition of use tax upon the purchase of two infrared thermal cameras used to inspect new construction buildings.

II. Adjustments to the audit assessment

Taxpayer requests the Department to review the adjustments made to the assessments to be certain that the items that were agreed to come off the assessment have been removed.

Authority: IC 6-8.1-5-1(b).

STATEMENT OF FACTS

Taxpayer inspects completed new construction buildings. The Department audited Taxpayer and issued use tax assessments. Taxpayer protested and the file was transferred to Protest Review. During protest review, Taxpayer provided documentation to rebut some of the audit items and the Department found adequate basis to remove these audit items. However, the use tax assessment remained concerning the purchase of two infrared thermal cameras used to inspect new construction buildings. Taxpayer requested a hearing to argue that the two cameras were exempt from the imposition of sales and use tax.

I. Use Tax—Equipment used to provide services

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).

Taxpayer came to the protest hearing forwarding legal arguments that its purchase and use of two infrared thermal cameras were exempt from sales and use tax under IC 6-2.5-5 *et seq*. However, the specific exemption statutes named by Taxpayer apply to operations engaged in producing tangible personal property. Taxpayer stated that it provides inspection services and does not produce any tangible personal property eligible under the exemption provisions in 6-2.5-5 *et seq*. After a discussion at the hearing with Taxpayer, Taxpayer withdrew its protest position, stating that it recognized there are no exemption statutes that apply to support its protest concerning the two cameras.

FINDING

Because Taxpayer withdrew its protest and conceded that use tax is due, this protest issue is moot; the use tax assessment on the two infrared thermal cameras is upheld.

II. Adjustments to the audit assessment

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).

Taxpayer was audited and an assessment was issued. Taxpayer protested the assessment and the file went to Protest Review. A representative of the Department reviewed the documentation submitted by Taxpayer. Based upon the sufficiency of the evidence, the Department agreed to remove several items from the assessment. A supplemental audit report was issued. At the hearing, Taxpayer stated that it recently had received assessment notices that did not fully reflect the agreed adjustments. Taxpayer requested that the Department adjust the assessment to accurately reflect the remaining tax liability.

At the hearing, Taxpayer did concede that the assessments for use tax for magazine subscriptions and trade show items were taxable.

FINDING

The file is returned to Audit for it to determine whether the items agreed to be removed from the audit assessment actually have been removed. Audit is to confirm that the outstanding liabilities are correctly billed.

DEPARTMENT OF STATE REVENUE

0120040111.LOF

LETTER OF FINDINGS NUMBER: 04-0111 AGI
ADJUSTED GROSS INCOME TAX
FOR TAX PERIOD: 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Adjusted Gross Income Tax: Imposition

Authority: IC 6-3-2-1 (a), IC 6-3-2-2 (a), *State Election Board v. Evan Bayh*, 521 N.E.2d 1212, (Ind. 1988).

The taxpayers protest the imposition of the adjusted gross income tax.

STATEMENT OF FACTS

The taxpayers are a married couple who were assessed Indiana adjusted gross income tax, penalty and interest for the year 2002. They protested the assessment and a hearing was held by telephone. This Letter of Findings results.

Adjusted Gross Income Tax: Imposition

DISCUSSION

Indiana imposes an adjusted gross income tax pursuant to the following provisions of IC 6-3-2-1 (a):

> Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

The department assessed adjusted gross income tax on the taxpayers' income as an Indiana resident. The taxpayers contends that they earned the income as a nonresident of Indiana and is not subject to the imposition of the tax. The issue to be determined is whether or not the taxpayers were Indiana residents for purposes of Indiana adjusted gross income taxation during the 2002 tax year.

For purposes of adjusted gross income tax, IC 6-3-1-12 defines the term "resident" as "any individual who was domiciled in this state during the taxable year." In accordance with this definition, the taxpayer would be considered an Indiana resident and subject to tax on income earned during the period when he was domiciled in Indiana.

Indiana tax assessments are presumed to be correct and taxpayers bear the burden of proving that any particular assessment is incorrect. IC 6-8.1-5-1 (b).

The Indiana Supreme Court considered the issue of the meaning of domicile in *State Election Board v. Evan Bayh*, 521 N.E.2d 1212, (Ind. 1988). In that case, Mr. Bayh desired to run for governor of the state. Pursuant to public discussion concerning whether Mr. Bayh met the residency requirements for governor, Mr. Bayh sought a declaratory judgment determining that he met the residency requirement. The Indiana Supreme Court affirmed the trial court's decision that the standard for residency was whether or not Mr. Bayh had an Indiana domicile. It also held that Mr. Bayh was domiciled in Indiana.

Domicile in Indiana is defined as "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *State Election Board* at page 1317. Once established, a person's domicile is presumed to continue until the person's actions provide adequate evidence that along with moving to another jurisdiction, the person intends to establish a domicile in the new residence. Whether or not the person has successfully established a new domicile is a question of fact to be determined by the trier of fact. *Id.* at 1317. Some of the facts considered were that Mr. Bayh paid in-state tuition at Indiana University, out-of -state tuition at the University of Virginia law school and voted in the elections in Vigo County, Indiana. He also registered for the draft from Indiana. The Supreme Court considered these acts adequate evidence to prove that Mr. Bayh intended to return to Indiana and retain his Indiana domicile even though he had lived outside the state for several years.

The taxpayers contend that they moved from Indiana in 1999 and purchased property in Florida in 1999. The taxpayers kept their Indiana drivers' licenses until they replaced them with Florida licenses in late 2002. They also obtained Florida voters' registration cards in late 2002. The totality of these actions and failures to act do not clearly evidence that the taxpayers intended to change their domicile to Florida until late 2002.

The taxpayers did not meet his burden of proving that their changed his domicile from Indiana to Florida.

FINDING

The taxpayers' protest is denied.

DEPARTMENT OF STATE REVENUE

0320040117.LOF

LETTER OF FINDINGS NUMBER: 04-0117
Withholding Tax
Responsible Officer
For the Tax Period 1993-2000

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(g).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was the vice president of a corporation that did not remit the proper amount of withholding taxes to Indiana for the period 1993-2000. 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 held and this Letter of Findings results.

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(g), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The taxpayer produced substantial documentation that he was not involved in the financial aspects of the corporation and had no duty to collect and remit the withholding taxes to the state. Therefore, he is not personally responsible for the payment of the corporate withholding taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220040180P.LOF

LETTER OF FINDINGS NUMBER: 04-0180P
Income Tax
For the Short Period ending March 26, 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a short period income tax return for the period ending March 26, 2002.

The taxpayer is an out-of-state company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the taxpayer did not have the information available at the election date to file the income tax return, and, the taxpayer has a good compliance record.

The taxpayer was acquired by another corporation in the tax year in question. At the time of the acquisition, the taxpayer did not know if the acquisition would be a stock transfer, or, an asset transfer. In the event the transfer was an asset transfer (Section 338(h)(10)), the taxpayer would have to file a short period income tax return. On July 15, 2002, the taxpayer paid an extension payment in the event the taxpayer decided to do an asset election at a later date. Later, the taxpayer actually decided to do an asset transfer and it took several months for the taxpayer to determine the tax liability. The tax liability was paid three weeks after the election date (due date) and deemed three weeks late.

The Department points out that the taxpayer knew at least by November 9, 2002, that an asset election would be made. The Department feels that the taxpayer had plenty of time (over one month), in which to properly calculate the tax liability. On this point, the Department feels the taxpayer fails to establish reasonable cause.

With regard to the compliance history, the taxpayer has had several late filings. The Department feels the taxpayer fails to establish reasonable cause on this point.

The regulation which controls penalty is 45 IAC 15-11-2(b) which states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

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

0220040181P.LOF

LETTER OF FINDINGS NUMBER: 04-0181P
Income Tax
For the Short Period ending March 26, 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of

publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a short period income tax return for the period ending March 26, 2002.

The taxpayer is an out-of-state company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the taxpayer unexpectedly switched from a stock election to an asset sale on the election date of December 15, 2002. This switching of the election caused the taxpayer to be required to file a short period return for the period ending March 26, 2002. As the taxpayer did not have the information available, the short period income tax return was filed and paid late.

The Department points out the taxpayer stated in Hearing that a payment of $300,000 was made on July 15, 2002 in the event the taxpayer decided to do an asset election. The Department feels that if the taxpayer was contemplating the asset election five months in advance of the election date, the taxpayer should have had the necessary information to file the income tax return on the election date.

The regulation which controls penalty is 45 IAC 15-11-2(b) which states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

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

0420040186.LOF

LETTER OF FINDINGS NUMBER: 04-0186
Sales and Withholding Tax
Responsible Officer
For the Tax Period 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

1. Sales and Withholding Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-3-4-8(g), IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan, 654 N.E. 2d 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit said taxes during the tax 1995 tax year. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales and Withholding Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against taxpayer pursuant to IC 6-3-4-8(g), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2d 279 (Ind.1995) any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit sales and withholding taxes to the state.

The taxpayer submitted substantial documentation to demonstrate that he had no duty to collect and remit sales and withholding taxes to the state. Therefore, he is not personally responsible for the payment of the corporate sales and withholding taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420040197.LOF

LETTER OF FINDINGS NUMBER: 04-0197
Use Tax
For the Periods 2000 - 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax—Production exemption

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-2.5-3-4; IC 6-2.5-3-5; IC 6-2.5-5; IC 6-2.5-5-3(b); Indiana Dept. of Revenue v. Interstate Warehousing, Inc., 783 N.E.2d 248, 250 (Ind. 2003).

Taxpayer protests the assessment of use tax due on items Taxpayer asserts are used in production.

STATEMENT OF FACTS

Taxpayer manufactures and sells pharmaceutical products. The Department conducted an audit of Taxpayer and assessed use tax due on items that were purchased exempt from sales tax, but upon which the auditor found use tax should have been paid. Taxpayer filed a protest and a hearing was held.

I. Sales and Use Tax—Production exemption

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).

Taxpayer purchased a pump to pump water from the ground. Taxpayer is on a well and uses the water to make products as well as for general purposes. Taxpayer asserts that pumping the water from the ground is an integral part of manufacturing. The auditor determined that the pump was used in pre-production.

IC 6-2.5-3-2 imposes an excise tax, commonly called the use tax, on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction. Credit against the use tax due is given for sales tax that already has been paid. *See* IC 6-2.5-3-4 and IC 6-2.5-3-5.

Exemptions to sales and use tax exist. *See, generally,* IC 6-2.5-5. The Indiana Supreme Court has stated that it is well established that exemption statutes are strictly construed against a taxpayer so long as the intent and purpose of the Indiana Legislature is not thwarted; as such, a taxpayer has the burden of establishing its entitlement to an exemption. Indiana Dept. of Revenue v. Interstate Warehousing, Inc., 783 N.E.2d 248, 250 (Ind. 2003). IC 6-2.5-5-3(b) states that transactions involving manufacturing machinery, tools, and equipment are exempt from the sales and use tax if the person acquiring the property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property. The pump brings water from the ground to a pressure tank and the water then is distributed

throughout the building for general purpose uses as well as in manufactured products. The pump is not used to distribute water within the manufacturing process, but before the manufacturing process. For this reason, the purchase of the pump was not exempt from sales and use tax.

Taxpayer also subscribed to United States Pharmacopoeia (USP)—a book that provides standardized test methods for the most common and widely used raw materials. Taxpayer stated that the testing of raw materials is essential and mandated; for this reason the subscription should not be taxed. However, because USP contains the specifications for testing raw materials when received and before combination with other ingredients or processes, the USP book was used before the manufacturing process. For this reason, the purchase of the subscription was not exempt from sales and use tax.

Taxpayer also had purchased lab supplies and materials and did not pay sales or use tax on those transactions. During the audit, Taxpayer and the auditor agreed that 70% of the lab supplies were used in an exempt manner and 30% of the lab supplies were used in a taxable manner. Taxpayer later asserted that the lab supplies and materials were used in production. At the hearing, Taxpayer returned to the original determination agreement.

FINDING

For the reasons stated above, Taxpayer's protest of the taxability of the well pump and the USP subscription is denied; use tax is due. In accord with the audit agreement, 70% of the lab supplies and materials are not taxable and 30% are taxable.

DEPARTMENT OF STATE REVENUE

04-20040253.LOF

LETTER OF FINDINGS NUMBER: 04-0253
Gross Retail & Use Taxes
For Years 2001 & 2002

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail and Use Taxes—Motorcycles

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-2.5-3-7; IC § 6-2.5-4-1; IC § 6-2.5-5-15; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4; 45 IAC 2.2-4-1; 45 IAC 2.2-5-21; 45 IAC 2.2-1-1

Taxpayer protests the assessment of the state's gross retail tax on out-of-state sales of ATV's and/or motorcycles, arguing that since the Indiana Bureau of Motor Vehicles stated no gross retail tax was owed because the vehicles were not to be licensed in Indiana, these transactions were exempt.

II. Penalty—Request for Waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2(b)

Taxpayer protests the imposition of the 10% negligence penalty and requests a waiver.

STATEMENT OF FACTS

Taxpayer is a dealer of Polaris, Suzuki, and Kawasaki all-terrain vehicles (ATV's) and motorcycles. Taxpayer also sells parts and sundries, and services all makes and models of motorcycles. Taxpayer's sales are both retail and wholesale. The transactions at issue concern sales to out-of-state customers who came into Indiana, purchased the vehicles, and then took them out-of-state for registration and licensing in their home states. There is also an issue concerning the proper exemption certificates that taxpayer needed to support the exemption claim. Additional facts will be supplied as required.

I. Gross Retail and Use Tax—Motorcycles

DISCUSSION

Taxpayer protests the proposed assessment of use tax on sales of ATV's and motorcycles where out-of-state customers came into Indiana, purchased the vehicles, and then took them out-of-state for registration and licensing. Taxpayer alleges that Indiana's Bureau of Motor Vehicles informed taxpayer's representative that since the vehicles at issue were off-road, they did not require registration and licensing by the State of Indiana, and therefore taxpayer was not required to collect and remit the state's gross retail tax on these transactions.

The audit argues that taxpayer incorrectly assumed these retail transactions were exempt based on the Bureau's representations, and, moreover, the ST-105's submitted as proof of exemption would not be accepted because taxpayer should have used properly executed ST-137's its exemption claim. The audit's argument is therefore two-fold: these transactions are not exempt; even if they were exempt, taxpayer used an incorrect exemption certificate form to support the claim for exemption. As stated in the audit report:

The taxpayer feels that the ATV's sold for use outside Indiana should be exempt from the Indiana gross retail tax under... motor

vehicles transported to a destination outside Indiana.

The auditor was informed by the taxpayer that the taxpayer asked the license branch in... if the ATVs sold for use outside of Indiana are subject to the gross retail tax. Per the taxpayer, the license branch informed the taxpayer that these sales are not subject to the gross retail tax.

The taxpayer did not have any exemption certificates on file for the ATV's sold for use outside of Indiana. The auditor gave taxpayer's accountant,..., Form ST-137 (Certificate of Exemption for Out-of-State Delivery of Motor Vehicle, etc.) to obtain for the ATVs sold for use outside Indiana. The next day the taxpayer contacted the auditor about the Form ST-137 stating that this form would not be appropriate since the ATVs do not have to be licensed or registered. The taxpayer was informed since the ATVs do not have to be licensed or registered there are no exemption certificates for the ATVs sold for use outside of Indiana and the taxpayer would be liable for the gross retail tax on these ATV's.

At the final conference with the taxpayer's accountant, the taxpayer had obtained five Form ST-105 from their out-of-state customers. The taxpayer was informed that these would not be acceptable.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1. Pursuant to IC §§ 6-2.5-3-1 through 6-2.5-3-7, an "excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction." An exemption is provide in IC § 6-2.5-3-4 if "the property was acquired in a retail transaction and the state gross retail tax" was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a "person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;" therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

The issues in this case are whether gross retail taxes were due on these transactions, collected and remitted to the State of Indiana, or if the transactions were exempt. If the transactions were not exempt, taxpayer remains liable for the uncollected and unremitted gross retail tax.

45 IAC 2.2-1-(c) provides in pertinent part:

The state gross retail tax is imposed on retail transactions made in Indiana... The first category is described as transactions of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1.

45 IAC 2.2-4-1(a) provides in pertinent part:

Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail....

See also, IC § 6-2.5-4-1.

IC § 6-2.5-5-15 provides in pertinent part:

Transactions involving motor vehicles, trailers, watercraft, and aircraft are exempt from the state gross retail tax, if:

(1) upon receiving delivery of the motor vehicle, trailer, watercraft, or aircraft, the person immediately transports it to a destination outside Indiana;

(2) the motor vehicle, trailer, watercraft, or aircraft is to be titled or registered for use in another state; and

(3) the motor vehicle, trailer, watercraft, or aircraft is not to be titled or registered for use in Indiana.

45 IAC 2.2-5-21 provides in pertinent part:

The state gross retail tax shall not apply to sales of motor vehicles, trailers, and aircrafts, delivered in Indiana for immediate transportation to a destination outside of Indiana and for licensing or registration for use in another state, and not to be licensed or registered in Indiana.

Based on the statutes and regulations cited *supra*, taxpayer's transactions of licensed vehicles were retail transactions exempt by both statute and regulation from the imposition of Indiana's gross retail tax. The cited language is clear and unambiguous. Both the ST-105 and ST-137 require signatures signed "under penalty of perjury." The ST-137 requires a bit more information, but the information is sufficient to support an exemption claim in this instance.

FINDING

Taxpayer's protest, concerning the assessment of gross retail tax on out-of-state sales where the tangible personal property was immediately moved and licensed outside the state, is sustained. If the vehicles were not licensed out-of-state, the exemption does not apply, and the applicable tax is owed to the Department.

II. Penalty—Request for waiver

DISCUSSION

Taxpayer protests the imposition of the 10% negligence penalty on the entire assessment. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due. Taxpayer's representative stated in the Letter of Protest and at the hearing

that taxpayer relied on the information obtained from the Indiana Bureau of Motor Vehicles, and that the failure to pay the proper amount of tax was due to that state agency's interpretation of Indiana's statutes, regulations, and case law.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, waiver of the penalty on that part of the assessment that was successfully protested is appropriate in this particular instance. The penalty remains on that part of the assessment that was unsuccessfully protested.

DEPARTMENT OF STATE REVENUE

0420040373.LOF

LETTER OF FINDINGS NUMBER: 04-0373
Sales and Use Tax
For Tax Years 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-5-8; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for sales tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. The rental rate was far below the market rate. Also, the same individual signed the rental agreement as both lessor and lessee. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer states that it qualifies for the rental exemption found in IC 6-2.5-5-8(b), which states:

> Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

Taxpayer states that the Department has provided no evidence that it has statutory or regulatory authority to require arm's-length pricing. Taxpayer also states that it consulted an aircraft consultant who agreed with its rental rate. Taxpayer states that the Department can not invalidate a business restructuring due to the presence of a tax benefit. Taxpayer also states that, in the event the

Department finds that it does have authority to impose arm's-length pricing in rental rates, the only remedy is to modify the rates and not to invalidate the claim for exemption. Taxpayer has provided no documentation in support of its position.

Taxpayer is incorrect on all counts. The rental exemption provided in IC 6-2.5-5-8(b) plainly states that the person claiming the exemption must resell, rent or lease the property in the ordinary course of its business. From all evidence available to the Department, taxpayer is not in the business of renting aircraft. Taxpayer has provided no documentation of any business activity at all, beyond the lease agreement signed as lessor and lessee by the same individual, let alone sufficient documentation to establish that it rented the aircraft in its ordinary course of business. Taxpayer has not even provided documentation that any rental payments were made at its generously low rental rate. Taxpayer has not provided any documentation that the rental rate is common or even in on the low end of going market rates.

Regarding taxpayer's claim that there is no authority for the Department to impose arm's-length pricing for the rental rates, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

Finally, taxpayer's claims that the Department can not invalidate a business restructuring due to a tax benefit and that the only remedy is to modify the rental rate are evidence that taxpayer fundamentally misunderstands the Department's actions. The Department is not invalidating a business restructuring. It simply determined that a taxpayer was not eligible for a claimed exemption. There is no need to modify a rental rate here. Taxpayer claimed an exemption for which it was not eligible and the Department disallowed the exemption. A sale occurred and sales tax was due but not paid. It's that simple.

In conclusion, the Department denied taxpayer's claim for exemption because taxpayer did not qualify for the exemption provided in IC 6-2.5-5-8(b). The Department was not attempting to invalidate taxpayer's business restructuring, but was merely denying an invalid claim for exemption. All evidence available to the Department shows that this was a "sham transaction" and the Department was correct to deny the claim for exemption.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040421.LOF

LETTER OF FINDINGS NUMBER: 04-0421
Use Tax
For Years 2001, 2002, 2003

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax—Agricultural exemptions

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-5-1; IC § 6-2.5-5-2; IC § 6-3-1-3.5(a); 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-2-2; 45 IAC 2.2-5-1; 45 IAC 2.2-5-2; 45 IAC 2.2-5-3; 45 IAC 2.2-5-4; 45 IAC 2.2-5-6; 26 U.S.C. § 62; 26 U.S.C. § 165; 26 U.S.C. § 183

Taxpayer protests the assessment of use tax on items used in producing agricultural commodities, specifically alpaca fleece, based on the audit's determination that taxpayer's alpaca ranch was a "hobby," not a business engaged in for profit.

STATEMENT OF FACTS

Taxpayer owns and operates an alpaca ranch. At the time of the audit, taxpayer had seventeen alpacas, weighing between 125-200 pounds each and each producing approximately four pounds of fleece per year. Taxpayer breeds the animals to increase the size of the herd, a process known as "alpaca compounding," keeping progeny instead of selling the babies for profit. Once taxpayer's herd gets to the size he wishes to maintain, he will start selling animals. As of the date of the hearing, six of his breeding females were expecting foals to be delivered any day. Breeders show their animals at various places; values depend on breeding lineage, quality of fleece and color, and any unique physical features in the animals' physical appearance, fleece, or progeny.

Taxpayer, in business since 1998, is a member of an alpaca owners association, attending fairs and festivals since 2001. The co-op takes in fleece from the members, cleans it, and turns the fleece into blankets, throws, and various items of clothing. Members purchase the items at wholesale and sell them at retail at fairs and festivals. Taxpayer did not register as a retail merchant with the Department until 2002. Sales tax was not collected and remitted to the state until then. The audit assessed gross retail tax; taxpayer is not protesting this part of the assessment. Taxpayer is protesting the assessment of use tax on items used in producing an agricultural commodity, alpaca fleece.

The audit's rationale for assessing use tax was that taxpayer operated the ranch as a "hobby." Additional facts will be added as necessary.

I. Use Tax—Agricultural exemptions

DISCUSSION

Taxpayer protests the assessment of use tax on items purchased and used in producing agricultural commodities, specifically alpaca fleece. Taxpayer argues that most of the items in question are entitled to the agricultural exemptions outlined in Indiana's tax statutes and regulations. Taxpayer concedes that there are items that are not available for exemption, and agrees with some of the assessment; see, Letter of Protest dated November 2, 2004. The audit's rationale for assessing the gross retail tax and denying the exemptions were based on the determination that taxpayer operated a "hobby" ranch.

As a preliminary matter, the Department must look at the so-called "hobby farm" issue as it relates to use tax. First of all, the federal statutes are concerned with income taxes and allowable loss deductions from income; there is nothing in the federal statutes showing any relevance to either gross retail or use taxes. There is also nothing in the federal statutes that would have any impact on the availability of exemptions from gross retail and use taxes.

IC § 6-3-1-3.5 defines individual adjusted gross income tax in terms of Section 62 of the Internal Revenue Code, "modified as follows." Section 62 begins with an individual's gross income tax "minus the following deductions." So, in order to arrive at an individual's Indiana income tax liability, the Department looks at the federal adjusted gross income (gross income minus allowable deductions) and then modifies that figure according to IC § 6-3-1-3.5(a). One of the deductions allowable under the federal scheme is losses from the sale of property (section 62(a)(3)) which references sections 161 *et seq*. Section 161 provides that "there shall be allowed as deductions the items specified in this part," i.e., Part VI. Section 165 allows deductions for losses "incurred in any transaction entered into for profit;" (165(c)(2)); section 167 allows deductions for depreciation of property used in a trade or business. Taxpayer ascribes his lack of profitability to costs associated in building up his herd, known as "alpaca compounding," claiming that income from producing the agricultural commodity, alpaca fleece, will rise as the herd increases and sales of their fleece and fleece related products increase.

The audit disallowed the agricultural exemptions, arguing that since taxpayers operated the ranch as a "hobby" and not for profit under section 165(c)(2) and section 183, taxpayer was not entitled to the exemptions under Indiana's tax laws. Section 183 disallows deductions from income tax for activities not engaged in for profit. Section 183(d) creates a presumption that if income exceeds deductions for three of five consecutive years, then the activity is engaged in for profit. The audit applied section 183(d) in order to characterize taxpayer's agricultural activities as a hobby because the production of alpaca fleece showed no profit yet. Then the audit determined that since taxpayer's alpaca farm was a "hobby," taxpayer was not entitled to any exemptions from the state's gross retail or use taxes for any purchases made in connection with the alpacas.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1. Pursuant to IC §§ 6-2.5-3-1 through 6-2.5-3-7, an "excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana is the property was acquired in a retail transaction." An exemption is provided in IC § 6-2.5-3-4 if "the property was acquired in a retail transaction and the state gross retail tax" was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a "person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption

in Indiana;" therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

The standards for sustaining a claim for the agricultural exemption can be found at IC § 6-2.5-5-1, IC § 6-2.5-5-2, and 45 IAC 2.2-5-1 through 45 IAC 2.2-5-6. Both IC § 6-2.5-5-1 and IC § 6-2.5-5-2 exempt certain transactions involving particular items from the state's gross retail and use taxes if the following requirements are met: taxpayer must acquire the property for "direct use in the direct production of food or commodities for sale" and be "occupationally engaged in the production of food or commodities" to be sold "for human or animal consumption." IC § 6-2.5-5-1. Secondly, "transactions involving agricultural machinery or equipment are exempt... if" taxpayer "acquires it for use in conjunction with the production of food or commodities for sale" and is "occupationally engaged in the production of food or commodities which he sells for human or animal consumption." IC § 6-2.5-5-2.

The following quote presents audit's position on taxpayer's activities:

Per 45 IAC 2.2-5-1, "Domestic animals and birds, pets, game animals and birds, *furbearing animals* (emphasis added in original), fish and other animals or poultry not directly used by the farmer in the direct production of food or agricultural commodities are subject to tax." These animals do not produce any food or commodity other than their fleece. That same citation goes on to state that other various animals are exempt "provided that they are directly used by the farmer in the direct production of food or agricultural commodities *for sale* (emphasis added in original).

Since taxpayer does not meet the federal definition of farmer, he is not considered to be "occupationally engaged" in farming for State purposes. He does not meet the State definition of "farmer" because he does not raise food or commodities for human consumption nor does he sell commodities provided by the animals. Taxpayer is subject to sales/use tax on all purchases.

The agricultural exemption statutes, IC § 6-2.5-5-1 and IC § 6-2.5-5-2, provide in pertinent parts:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

(1) the person acquiring the property acquires it for his direct use in the direct production of food or commodities for sale: and

(2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food or commodity production.

IC § 6-2.5-5-1

(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.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

IC § 6-2.5-5-2

The remainder of the statute uses language similar to that contained in IC § 6-2.5-5-1 in that engaging in producing commodities for sale is key to the exemption.

Taxpayer's purchases/transactions fall within the coverage of both these statutes if the Department determines that alpaca fleece is an agricultural commodity. The agricultural exemption regulations, 45 IAC 2.2-5-1, 45 IAC 2.2-5-2, 45 IAC 2.2-5-3, 45 IAC 2.2-5-4, and 45 IAC 2.2-5-6 supply many useful definitions, but do not define "an agricultural commodity." Several of the regulations even go so far as to list out specific items as either exempt or non-exempt purchases, *see*, e.g., 45 IAC 2.2-5-4, but there is really no one definition of "an agricultural commodity." Therefore, a bit of extrapolation is required.

The closest the state regulations come to a definition of agricultural commodity is 45 IAC 2.2-5-1(b)(2): "Baby chicks, ducklings, geese, turkey poults, hatching eggs, pigs, hogs *[sic.]* lambs, sheep, livestock, calves, and cows are exempt from tax, provided that they are directly used by the farmer in the direct production of food or agricultural commodities for sale."

The audit conceded that taxpayer's alpacas "do not produce any food or commodity other than their fleece." [emphasis added]. Taxpayer's letter of protest, testimony at the hearing, and materials presented at the hearing, and documents submitted post-hearing all support taxpayer's contention, and the Department so finds, that alpaca fleece is an agricultural commodity no different than sheep or lamb's wool.

To summarize:

Taxpayer has sufficiently documented his subjective and objective intent to raise alpacas and produce their fleece (the agricultural commodities at issue) for profit. Taxpayer is not engaged in this activity as a hobby. Alpaca raising requires an initial investment of thousands of dollars. Taxpayer is increasing the size of his herd ("alpaca compounding") before he begins selling animals for profit. This is a clear business decision based on common sense. Taxpayer turns in alpaca fleece to the co-op which takes in fleece from its members, turns the fleece into thread and then into items members purchase at wholesale to sell at retail. Taxpayer submitted several catalogues where alpaca products of all kinds are available for customers to purchase at retail. Alpaca products are luxury items commanding top prices that will certainly enlarge taxpayer's profit margins in the years to come. Alpaca fleece is an agricultural commodity no different than sheep or lamb's wool, **and** is a renewable commodity—alpacas are sheared once a year and can produce fleece as long as they live and their fleece's quality matches product quality and the tastes of the commercial market.

Pursuant to taxpayer's November 2, 2004 Letter of Protest, the items listed in the following sections are exempt from the state's gross retail and use taxes: sections 2, 3, 4, 5, 6, 8, 9, 10, and 11. Fencing in section 9 is not exempt; *see*, 45 IAC 2.2-5-2(d)(3); cutters, combs, and oil in section 10 are exempt for the reason stated.

FINDING

Taxpayer's protest concerning the audit's assessment of gross retail tax, based on agricultural exemptions for producing an agricultural commodity, specifically alpaca fleece, is sustained.

DEPARTMENT OF STATE REVENUE

0420040446.LOF

LETTER OF FINDINGS NUMBER: 04-0446
Sales and Withholding Tax
Responsible Officer
For the Tax Period 2000-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), Indiana Department of Revenue v. 654 N.E. 2nd 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed food and beverage taxes, sales taxes, interest and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit said trust taxes during the tax years 2000-2002. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2d 279 (Ind.1995), any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit sales taxes to the state.

The taxpayer submitted substantial documentation to demonstrate that she had no duty to collect and remit sales taxes to the state. Therefore, she is not personally responsible for the payment of the corporate trust taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420050013.LOF

LETTER OF FINDINGS NUMBER: 05-0013
Sales and Use Tax
For Tax Years 1998-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position

concerning a specific issue.

ISSUE

I. Sales Tax--Imposition

Authority: IC 6-8.1-5-1; IC 6-8.1-10-1

Taxpayer protests imposition of sales tax, penalties and interest.

STATEMENT OF FACTS

Taxpayer pleaded guilty in criminal court to one (1) count of failure to remit retail sales tax. The court ordered restitution of the base tax. The Indiana Department of Revenue ("Department") billed taxpayer for the base amount and also for penalties and interest. Taxpayer protests the bills. Further facts will be supplied as required.

DISCUSSION

I. Sales Tax--Imposition

Taxpayer protests bills for sales tax, penalty and interest. Taxpayer has failed to supply any documentation or analysis in support of the protest. The Department refers to IC 6-8.1-5-1(b) which states in relevant part:

> 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.

As explained in the Statement of Facts, taxpayer pleaded guilty to one (1) count of failure to remit retail sales tax. The criminal court ordered restitution of the base tax. The Department issued bills for the base tax and penalties and interest. Taxpayer has not provided any explanation for its protest, let alone met the burden of proving that the assessments are wrong under IC 6-8.1-5-1(b). Also, under IC 6-8.1-10-1(e), the Department may not waive interest.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420050060.LOF

LETTER OF FINDINGS NUMBER: 05-0060
Sales and Use Tax
For the Periods 2000 and 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales Tax—Untaxed Sales of Catalogs and Promotional Items

Authority: IC 6-8.1-5-1; IC 6-2.5-2-1; IC 6-2.5-4-1; IC 6-8.1-5-4(a).

Taxpayer protests the calculated amount of the sales tax due.

II. Use Tax—Untaxed Purchases of Catalogs and Promotional Items Distributed without Charge to Recipients in Indiana

Authority: IC 6-2.5-3-2.

Taxpayer protests the calculated amount of use tax due.

STATEMENT OF FACTS

Taxpayer is a wholesaler of janitorial and sanitation supplies. Taxpayer also sells and gives away to customers marketing merchandise, including catalogs, flyers, and printed advertising literature. These are purchased by retail vendors to use in promoting sales to consumers. Taxpayer operates warehouses across the United States, including a distribution center in Indiana. The Department conducted an audit on a best information available basis at Taxpayer's parent headquarters. The Department issued sales and use tax assessments; Taxpayer filed a protest and a hearing was held.

I. Sales Tax—Untaxed Sales of Catalogs and Promotional Items

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-2.5-2-1 imposes sales tax on retail transactions made in Indiana and a retail merchant is required to collect the tax as agent for the state. IC 6-2.5-4-1 defines a retail transaction as the acquisition of tangible personal property for resale to a customer for consideration. When tangible personal property is transferred to a customer, sales tax is to be calculated and collected.

IC 6-8.1-5-4(a) requires a taxpayer to maintain books and records in a manner that allows the Department review those books and records to determine liabilities and taxes due. IC 6-8.1-5-1(a) authorizes the Department to make a proposed assessment based on the best information available to the Department. The Department issued an best information assessment in this instance. The

Audit Summary stated that Taxpayer did not comply with audit requests to produce records regarding the volume of taxable catalog and promotional items sales in Indiana.

For the hearing, Taxpayer submitted two binders of records to substantiate amount due for untaxed sales of catalogs and promotional items. Taxpayer stated that while there is an amount of approximately $1,444 due for 2001, it disputes the additional assessment by the Department of $51,087 due for 2000 and $51,674 due for 2001. Despite the detailed and voluminous documentation submitted to the Department for the hearing and the rationale forwarded at the hearing, the Department does not find the evidence sufficient to rebut the assessment.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

II. Use Tax—Untaxed Purchases of Catalogs and Promotional Items Distributed without Charge to Recipients in Indiana

DISCUSSION

Indiana imposes an excise tax—commonly called the use tax—on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction. IC 6-2.5-3-2. Taxpayer distributed printed promotional materials to its customers without charge. Taxpayer had not paid sales tax when it acquired those materials for distribution. For this reason, use tax was due when Taxpayer gave those materials to its customers without charge. Taxpayer is protesting the best information available assessment made by the Department. Despite the detailed and voluminous documentation submitted to the Department for the hearing and the rationale forwarded at the hearing, the Department does not find the evidence sufficient to rebut the assessment.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20050096.LOF

LETTER OF FINDINGS NUMBER: 05-0096
Sales/Use Tax
For the Years 2002-2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax-Manufacturing exemption

Authority: Ind. Code § 6-2.5-5-3

Taxpayer protests the assessment of use tax with respect to a piece of machinery that straightens coiled steel.

STATEMENT OF FACTS

Taxpayer is a business engaged in the production of lawn equipment, and operates a facility in Indiana. As part of its operation, Taxpayer purchased a machine for the purpose of straightening steel coils prior to their insertion into a press designed to form the parts necessary for their lawn equipment. The Department assessed use tax with respect to the machine, which Taxpayer protested.

I. Sales and Use Tax-Manufacturing exemption

DISCUSSION

Under Ind. Code § 6-2.5-5-3, machinery directly used in the direct production of other tangible personal property is exempt from sales and use tax. Taxpayer argues that its machine is an integral part of its production of lawn equipment. In particular, Taxpayer notes its entire process. First, a coil of steel is loaded into a feeder. Second, the feeder feeds the steel into the machine, which straightens the steel prior to the steel entering a press. Third, an exact length of steel enters the press. Fourth, the press cuts the steel to the exact specification. When the steel is cut, the steel passes through the press. At this point, the machine sends a length of steel through it to be straightened, and the exact same length of steel passes through the press, repeating the process until the full coil is used.

Here, the straightening of steel does not constitute the production of other tangible personal property, notwithstanding its proximity to the production press. The first step in the actual production of tangible personal property is the production press. Accordingly, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420050129.LOF

LETTER OF FINDINGS NUMBER: 05-0129
Sales and Withholding Tax
Responsible Officer
For the Tax Period 1989-1992

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Sales and Withholding Tax-Responsible Officer Liability

Authority: IC 6-8.1-5-1(b), IC 6-3-4-8(g), IC 6-2.5-9-3.

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was the manager of a corporation that operated a restaurant and failed to pay its sales and withholding taxes during the tax period 1989-1992. The Indiana Department of Revenue assessed the unpaid sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax and a hearing was held.

1. Sales and Withholding Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer, who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), which provides in relevant part 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 proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The taxpayer was the manager of the restaurant. As the manager, the taxpayer is presumed to have been in a position to exercise control over the fiscal aspects of the restaurant. He argues, however, that in reality he had no control over the finances and did not determine which creditors would be paid. Since he did not produce any documentation to substantiate this claim, he failed to sustain his burden of proving that he did not have a duty to deduct and remit corporate sales and withholding taxes to the state.

Alternatively, the taxpayer argues that the amount of the assessed taxes for the corporation was too high. Although he was given ample opportunity to do so, he failed to produce any documentation to substantiate this claim. He failed to sustain his burden of proving that the amount of trust taxes assessed was incorrect.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

2820050151.LOF

LETTER OF FINDINGS NUMBER: 05-0151
Controlled Substance Excise Tax
For the Tax Period 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUE

1. Controlled Substance Excise Tax: Imposition

Authority: IC 6-7-3-5. IC 6-8.1-5-1 (b), Hurst v. Department of Revenue, 721 N.E.2d 370 (Ind. Tax. 1999), Hall v. Department of Revenue, 720 N.E.2d 1287 (Ind. Tax 1999),

Taxpayer protests the imposition of the Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested for possession of marijuana on January 1, 2004. The county prosecutor sent the Indiana Department of Revenue (department) on March 1, 2005, a letter stating that the prosecutor would not press criminal charges concerning the possession of marijuana. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on March 9, 2000, in a base tax amount of $20,039.95. Taxpayer filed a protest to the assessment. A hearing on the protest was held on July 14, 2005 and this Letter of Findings results.

DISCUSSION

1. Controlled Substance Excise Tax: Imposition

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Indiana Department of Revenue assessments are presumed to be correct and Taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Possession of the marijuana can be either actual or constructive. Hurst v. Department of Revenue, 721 N.E.2d 370 (Ind. Tax. 1999), Hall v. Department of Revenue, 720 N.E.2d 1287 (Ind. Tax 1999). Although both direct and circumstantial evidence may prove constructive possession, proof of presence in the vicinity of drugs, presence on property where drugs are located, or mere association with the possessor is not sufficient. Hurst at 374-375. To prove constructive possession, there must be a showing that Taxpayer had not only the requisite intent but also the capability to maintain dominion and control over the substance. Hurst at 374.

In the Hall case, the Indiana Department of Revenue assessed Controlled Substance Excise Tax individually on a husband and wife. The couple owned and lived together in a residence. The marijuana was grown in a basement room with a locked door. Only the husband had a key to the room. Although the wife co-owned the house, lived in the house, did laundry in the room adjacent to the room which housed the marijuana and the smell of marijuana permeated the house; the Court found that the wife did not have the capability to maintain dominion and control over the marijuana. Therefore she did not constructively possess the marijuana and the Controlled Substance Excise Tax was improperly imposed against the wife.

Taxpayer contends that he did not possess the marijuana at issue in this case. He stated that his codefendant actually possessed the marijuana. He supports this contention by stating that he was not in the house when the police made the arrest. He further states that he had no knowledge of the presence of marijuana in his house.

In this case, the police searched the house owned by the taxpayer. They found marijuana in a green tote bag in the living room and in a kitchen drawer. Digital scales of the type often used to weigh marijuana were also found in the kitchen drawer with the marijuana. Other common indicia of drug trafficking such as large amounts of cash and guns were found in various areas of the house.

The presence of the marijuana and other indicia of marijuana trade throughout the taxpayer's house indicated that the taxpayer had the intent to possess the marijuana and the capability to maintain dominion and control over the marijuana. The taxpayer constructively possessed the marijuana. The tax was properly imposed.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120050157P.LOF

LETTER OF FINDINGS NUMBER: 05-0157P
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 Indiana resident.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the taxpayer was ignorant of tax regulations, and, the taxpayer did not have

all of the relevant information at the due date to prepare the income tax return.

The taxpayer incurred a $4,000,000 increase in reportable income for the tax year in question.

$2,400,000 of this income increase came from the disallowance of losses as the State of Indiana does not recognize Federal Schedule A deductions. The taxpayer was ignorant of this regulation. According to 45 IAC 15-11-2(b), ignorance is negligence and is subject to the negligence penalty.

The remaining $1,600,000 of the income increase is the result of an increase in the rate-of-return for the taxpayer's investments. 70% of the investment entities provided the relevant tax records by the tax filing due date. Of the remaining 30%, most of these investment entities were hedge funds where the income could be estimated from 3rd quarter financials. The Department feels the taxpayer had adequate information available to make a reasonable estimate of income at the due date.

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

0320050166.LOF

LETTER OF FINDINGS NUMBER: 05-0166
Withholding Tax
Responsible Officer
For the Tax Period 1995-1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-8.1-5-1(b), IC 6-3-4-8(g).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was an employee of a corporation that did not remit the proper amount of withholding taxes during the tax period of 1995-1996. The Indiana Department of Revenue assessed the unpaid withholding taxes, interest, and penalty against the taxpayer as a responsible person of that corporation. The taxpayer protested the assessment of tax and a hearing was held.

1. Withholding Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The taxpayer produced substantial documentation that he had no control over the financial activities of the corporation. Therefore, he had no duty to collect and remit withholding taxes to the state. He is not personally responsible for the payment of the corporate withholding tax liabilities.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0120050188.LOF

LETTER OF FINDINGS NUMBER: 05-0188
Adjusted Gross Income Tax
For the Tax Period 1999-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of

publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Adjusted Gross Income Tax-Imposition

Authority: IC 6-8.1-5-1(b).

The taxpayer protests the imposition of adjusted gross income tax.

STATEMENT OF FACTS

The taxpayer did not file adjusted gross income tax returns for the tax periods 1999-2001. The Indiana Department of Revenue (department) computed the Indiana adjusted gross income tax due based upon the taxpayer's federal adjusted gross income. The department assessed the adjusted gross income tax, penalty and interest against the taxpayer. The taxpayer protested the assessment of tax. A hearing was scheduled, but the taxpayer did not appear. This Letter of Findings is based upon the documentation in the file.

1. Adjusted Gross Income Tax-Imposition

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer, who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

Indiana imposes an adjusted gross income tax on residents. IC 6-3-2-1. Every Indiana resident with income subject to the Indiana adjusted gross income tax is required to file a return and remit said tax to the state annually. The taxpayer failed to do this. Therefore the department computed the tax due to the state and issued an assessment pursuant to its authority granted by IC 6-8.1-5-1.

The taxpayer failed to present any arguments or evidence to indicate that the department erred in the computation of his adjusted gross income tax due. The taxpayer did not sustain his burden of proof.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20050195.LOF

LETTER OF FINDINGS NUMBER: 05-0195
Adjusted Gross Income Tax
For the Years 1999-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax—Eligibility for inclusion in a consolidated return.

Authority: Ind. Code § 6-3-2-2; Ind. Code § 6-3-2-2.8; Ind. Code § 6-3-3-2.; Ind. Code § 6-3-4-14; Ind. Code § 6-3-8-2; Ind. Code § 27-1-18-2; *Associated Insurance Co. v. Indiana Dep't of State Revenue*, 655 N.E.2d 1271 (Ind. Tax 1995)

Taxpayer protests the disallowance of a life insurance company from its consolidated group for adjusted gross income tax and supplemental net income tax purposes.

II. Adjusted Gross Income Tax—Computation of research expense credit

Authority: Ind. Code § 6-3.1-4-2; Ind. Code § 6-3.1-4-4; I.R.C. § 41; I.R.C. § 1501

Taxpayer protests the disallowance of its method of computing the credit for research expenses.

III. Adjusted Gross Income Tax—Inclusion of subsidiary in a consolidated return.

Authority: 45 IAC 3.1-1-38

Taxpayer protests the exclusion of a subsidiary from its consolidated income tax return.

IV. Tax Administration--Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent (10%) penalty for negligence.

STATEMENT OF FACTS

Taxpayer is a holding company for a group of corporations engaged in a myriad of different industries. One of the corporations in Taxpayer's group for federal income tax purposes is a domestic life insurance company. During the years in question, Taxpayer filed consolidated returns including several corporations, including the life insurance company.

As a result of Department audit, the non-insurance subsidiaries and the life insurance company were effectively separated for

adjusted gross income tax and supplemental net income tax purposes. This had the effect of increasing Taxpayer's total tax due for the years in question.

In addition, various subsidiaries of Taxpayer engaged in activities that resulted in eligibility for a research and development credit. When computing the percentage of the credit apportioned to Indiana, Taxpayer initially used the percentage based on its consolidated group's apportionment factor. However, Taxpayer amended its returns to divide its credit pro rata among its eligible subsidiaries, then used the apportionment factor for each separate company to compute its allowable credit. The Department disallowed Taxpayer's approach used in its amended returns.

Further, for the years in question, Taxpayer did not initially include one subsidiary on its initial tax returns. Upon audit, Taxpayer sought to include the subsidiary as part of its consolidated group, but the Department did not permit Taxpayer to include that subsidiary, claiming that the subsidiary did not have nexus with Indiana. Finally, Taxpayer protests the imposition of a ten percent (10%) penalty for negligence.

I. Adjusted Gross Income Tax— Eligibility for inclusion in a consolidated return.

DISCUSSION

First, Taxpayer argues that the non-insurance subsidiaries and the life insurance company should be permitted to file consolidated returns for all tax types. In particular, Taxpayer argues that its calculations of adjusted gross income and supplemental net income tax should permit the full benefit of the two groups combined income (or losses) and their combined adjusted gross income.

Under Ind. Code § 6-3-4-14:

(a) An affiliated group of corporations shall have the privilege of making a consolidated return with respect to the taxes imposed by IC 6-3. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all of the provisions of this section including all provisions of the consolidated return regulations prescribed pursuant to Section 1502 of the Internal Revenue Code and incorporated herein by reference and all regulations promulgated by the department implementing this section prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) For the purposes of this section the term "affiliated group" shall mean an "affiliated group" as defined in Section 1504 of the Internal Revenue Code with the exception that the affiliated group shall not include any corporation which does not have adjusted gross income derived from sources within the state of Indiana.

(c) For purposes of IC 6-3-1-3.5(b), the determination of "taxable income," as defined in Section 63 of the Internal Revenue Code, of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, shall be determined pursuant to the regulations prescribed under Section 1502 of the Internal Revenue Code.

(d) Any credit against the taxes imposed by IC 6-3 which is available to any corporation which is a member of an affiliated group of corporations making a consolidated return shall be applied against the tax liability of the affiliated group.

Taxpayer argues that the life insurance company does, for purposes of this section, have Indiana adjusted gross income, even though the adjusted gross income of the life insurance company is not subject to tax.

At the onset of this discussion, Taxpayer and the Department appear to agree on at least one piece of methodology. First, the gross income tax of both the non-insurance subsidiaries and the life insurance company are computed in the normal manner. Second, the non-insurance subsidiaries, on a consolidated basis and under the provisions of Ind. Code § 6-3-2-2, and the life insurance company under Ind. Code § 6-3-8-2(c)(2), would compute their apportionment factors, and apply the respective apportionment factors to their respective incomes to arrive at adjusted gross income (or in the case of the life insurance company, a *pro forma* adjusted gross income).

At this point, however, the calculations begin to differ. First, the gross income tax becomes a credit against adjusted gross income tax. Ind. Code § 6-3-3-2. Taxpayer seeks to use the combined gross income tax against the adjusted gross income tax of just the non-insurance subsidiaries due to the exemption from adjusted gross income tax for domestic insurance companies. Ind. Code § 6-3-2-2.8(4). However, the Department sought to allow the gross income tax of only the non-insurance subsidiaries as a credit against the adjusted gross income tax of those same entities, with the gross income tax of the life insurance company standing alone.

A further difference occurs in the supplemental net income tax. Under the supplemental net income tax provisions, a taxpayer's adjusted gross income tax is figured under the normal apportionment/allocation method provided under Ind. Code § 6-3-2-2, except in the case of domestic insurance companies. In the case of domestic insurance companies, the adjusted gross income is apportioned on a single-factor basis, namely premiums at risk. Ind. Code § 6-3-8-2(b)-(c).

For most corporations, a deduction is allowable for the highest of a taxpayer's adjusted gross income tax, gross income tax, or gross premiums tax. In the case of a domestic life insurance company, a deduction is allowable for the higher of the gross income tax or gross premiums tax. *Id.*

Here, it is difficult to reconcile Taxpayer's position that the income of the entities should be consolidated for either tax type. First, with respect to adjusted gross income tax, the life insurance company is exempt. Period. Accordingly, the life insurance company's income situation does not affect the adjusted gross income for the non-insurance subsidiaries.

Further, with respect to the credit against adjusted gross income tax, Taxpayer seeks a "best of both worlds" situation. Taxpayer is seeking to compute its adjusted gross income tax without the inclusion of an entity-namely, the life insurance company. Then, once it gets done with that, it seeks to use that same entity to claim a credit against the tax for all other entities. In short, Taxpayer is using an artificially high figure for gross income tax to offset a lowered adjusted gross income tax.

Taxpayer argues that it is in fact eligible to use the credit for gross income taxes owed by the life insurance company in order to offset the adjusted gross income tax owed by the non-life insurance subsidiaries. Taxpayer argues that Ind. Code § 6-3-4-14 permits corporations that file consolidated federal income tax returns and that have adjusted gross income from Indiana sources to file consolidated adjusted gross income tax returns. Taxpayer asserts that the insurance companies have adjusted gross income from Indiana sources, but merely do not pay tax on that.

Taxpayer further cites to *Associated Insurance Co. v. Indiana Dep't of State Revenue*, 655 N.E.2d 1271 (Ind. Tax 1995). In that particular case, the taxpayer consisted of a group of insurance companies that filed a consolidated gross income tax return. Several members of the group were eligible for a credit based on providing health insurance to individuals who could not otherwise obtain private health insurance. *Id.* at 1272. Various members of the group accrued credits greater than those members' gross income tax liabilities, as computed on a separate-company basis. The taxpayer sought to use the credit against the overall gross income tax liability of the consolidated group, rather than limit the credit to the liabilities of the separate members that incurred eligible expenses. The court held that the credits were allowable to offset the entire liability. *Id.* at 1276.

Here, Taxpayer's situation is distinctly different. Unlike the insurance companies in *Associated Insurance* that sought to apply a credit for a tax for which all members of the group were liable, Taxpayer here is seeking to use a credit to reduce its consolidated tax liability while not being subject to the very liability that it is seeking to reduce.

Further, within the overall structure of Indiana's tax code, Taxpayer's argument fails. When read together, the effect is that corporate taxpayers pay the higher of their adjusted gross income tax liability or gross income tax liability. This implies that the taxpayers are subject to both liabilities. While this is certainly true of the non-insurance subsidiaries, the life insurance company is not subject to both taxes; it is only subject to gross income tax, and then only if it elects to be so treated to be subject in lieu of the gross premiums tax under Ind. Code § 27-1-18-2. Accordingly, based on the overall structure of the tax codes, the only logical result is that non-insurance subsidiaries must be segregated from the life insurance company.

Finally, even if Taxpayer does qualify for inclusion of the insurance company in its consolidated return, the issue of whether the return fairly reflects Taxpayer's Indiana source income must be addressed. Under Ind. Code § 6-3-2-2(l),

> If the allocation and apportionment provisions of this article do not fairly reflect 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

Here, Taxpayer is seeking to effectively eliminate its adjusted gross income tax liability by use of a credit from an entity that is not even subject to the tax. To achieve a more equitable allocation of the income that Taxpayer provided, separate accounting between the life insurance company and the non-life insurance subsidiaries was a method to fairly reflect the income of each part of its business. Accordingly, Taxpayer's protest is denied on this basis.

With respect to the supplemental net income tax, Taxpayer's argument fails again. First, the very statute that prescribes the method by which the tax is computed, Ind. Code § 6-3-8-2, gives a method (one-factor apportionment) for domestic life insurance companies and a separate method (apportionment and allocation per Ind. Code § 6-3-2-2) for other corporations subject to the tax. This implies that the Legislature did not intend for the two types of businesses to be combined. Accordingly, the audit was correct in computing Taxpayer's supplemental net income tax separately for the life insurance company and the non-life insurance subsidiaries.

FINDING

Taxpayer's protest is denied.

II. Adjusted Gross Income Tax-Computation of research expense credit

DISCUSSION

Taxpayer argues that the auditor computed Taxpayer's credit for research expenses incorrectly. Under Ind. Code § 6-3.1-4-2, as it existed for the years in question, the statute provided in relevant part:

(b) A taxpayer who does not have income apportioned to this state for a taxable year under IC 6-3-2-2 is entitled to a research

expense tax credit for the taxable year in the amount of the product of:

(1) five percent, multiplied by

(2) the remainder of the taxpayer's Indiana qualified research expenses for the taxable year, minus:

(A) the taxpayer's base period Indiana qualified research expenses, for taxable years beginning before January 1, 1990

(B) the taxpayer's base amount, for taxable years beginning after December 31, 1989

(c) A taxpayer who has income apportioned to this state for a taxable year under IC 6-3-2-2 is entitled to a research expense tax credit for the taxable year in the amount of the lesser of:

(1) the amount determined under subsection (b); or

(2) five percent multiplied by the remainder of the taxpayer's total qualified research expenses for the taxable year, minus:

(A) the taxpayer's base period research expenses, for taxable years beginning before January 1, 1990

(B) the taxpayer's base amount, for taxable years beginning after December 31, 1989

further multiplied by the percentage determined under IC 6-3-2-2 for the apportionment of the taxpayer's income for the taxable year to this state.

Taxpayer sought to compute the amount of the credit based on the apportionment factors of each subsidiary that had qualifying research expenditures, rather than the apportionment factor for the entire consolidated group.

In order to do this, first Taxpayer found the amount of the increase in research expenses for each subsidiary. Then, Taxpayer prorated its expenses to each entity based on its increase. This gave each entity's share of research expenses. Then, the apportionment factor for each entity was applied to the entity's share of research expenses. This provided the amount that Taxpayer sought to use for paragraph (c) of the statutory calculation.

For instance, for one year the computation, using Taxpayer's methods as amended and Taxpayer's apportionment factor for the entire consolidated group was as follows:

Line		Indiana only qualified research	Total federal qualified research
4	Wages for qualified services	$14,177,632.00	$15,074,064.00
5	Cost of supplies	$5,123,701.00	$5,488,669.00
6	Rental or lease cost of computers		$0.00
7	65% of contract expenses	$4,323,696.00	$4,982,551.00
8	Total qualified research expenses	$23,625,029.00	$25,545,284.00
9	Fixed base percentage	0.01	0.01
10	Average annual gross receipts	$1,227,165,003.00	$1,227,165,003.00
11	Multiply line 10 by line 9	$12,271,650.03	$12,271,650.03
12	Subtract line 11 from line 8	$11,353,378.97	$13,273,633.97
13	Multiply line 8 by 50%	$11,812,514.50	$12,772,642.00
14	Enter the smaller of line 12 or line 13	$11,353,378.97	$12,772,642.00
15	Add lines 3 (not relevant for this taxpayer) and 14	$11,353,378.97	$12,772,642.00
16	Enter Indiana apportionment percentage for the current year		0.2039
17	Multiply line 15 column B by the percentage on line 16		$9,315,483.41
18	Enter the smaller of amount on line 15 column A, or line 17		$9,315,483.41
19	Allowable percentage for Indiana research expense tax credit		0.05
20	Multiply line 18 by 5%, enter amount of current year tentative credit		$465,774.17

However, Taxpayer, in computing the amount of the allowable credit, sought to do the following (a minor discrepancy exists between the calculations of the expenses eligible for computation):

Company	Qualifying expenditures	Amount for computation
A	$289,422.00	$12,768,207.00
B	$2,728,572.00	$12,768,207.00
C	$20,667,730.00	$12,768,207.00
D	$1,621,962.00	$12,768,207.00
E	$228,726.00	$12,768,207.00
Total	$25,536,412.00	

Company	Credit allocation %	Pre-apportionment QRE	Apportionment percentage	Post-apportionment QRE
A	1.13%	$144,711.01	0%	$0.00
B	10.69%	$1,364,286.11	16.88%	$230,291.49
C	80.93%	$10,333,865.81	86.81%	$8,970,828.91

D	6.35%	$810,981.06	0	$0.00
E	0.90%	$114,363.01	100%	$114,363.01
Total				$9,315,483.41

Thus, Taxpayer sought to use $9,315,483 as its qualified expenses in place $2,603,437 ($12,768,207*20.39%) based on the Department's apportionment formula.

Taxpayer argues that its computation is consistent with Ind. Code § 6-3.1-4-4, which provides:

The provision of Section 41 of the Internal Revenue Code and the regulations promulgated in respect to those provisions are applicable to the interpretation and administration by the department of the credit provided by this chapter, including the allocation and pass through of the credit to various taxpayers and the transitional rules for determination of the base period.

Section 41(f) of the Internal Revenue Code provides that, where a group of corporations are part of a controlled group, the credit for research activities shall be aggregated and then divided up proportionately among the corporations based on their individual research expenses and payments. For these purposes, a "controlled group" is defined differently than an affiliated group for consolidated corporate income tax returns. Whereas I.R.C. § 1501 et seq. require eighty percent control of the relevant corporations by the same persons to be part of a consolidated income tax return, I.R.C. § 41(f)(5) only requires fifty percent control of the relevant corporations.

As a result of the different control provisions and the reference in Indiana's statutes to "taxpayer", Taxpayer argues that the intent of the provision requires computation of the credit on a separate corporation basis.

Basically, there are two methods for computing adjusted gross income tax in a consolidated group. The strongly preferred method is the combined approach. Under this approach, a consolidated group's income is to be figured on the basis of the whole consolidated group. That is, the net income for the various corporations and the apportionment factors are to be computed as if all the corporations were one large entity. This contrasts with the "stacked" method, in which each corporation's income and apportionment factors are determined separately, then the corporations respective income are added together to arrive at a total for the entire group.

In this instance, Taxpayer's argument is valid to the extent that the various ultimate taxpayers are separate entities for tax purposes. For instance, if the credit had to be distributed among several corporations that filed separately, or among partners in a partnership, then Taxpayer's method would be applicable.

Here, however, Taxpayer seeks the benefit of yet another "best of both worlds" approach. Basically, Taxpayer is attempting to seek the full benefit of the normal method in determining its income, while seeking the full benefit of the stacked method when seeking the tax credit for research expenses. Consistently throughout the income tax provisions, "taxpayer" in a consolidated group refers to the group, not the individual corporations that constitute the consolidated group. Accordingly, to the extent the corporations that constitute the consolidated group are eligible for expenses, Taxpayer is required to determine the credit for the group in the aggregate, then determine the portion allowable for credit using the aggregated apportionment factors for the consolidated group, not those of the individual members.

Further, even if Taxpayer's method is to be accepted, Taxpayer is required to determine the credit consistently for each entity. Here, Taxpayer sought to apply the calculation under subsection (b) in the aggregate, while the subsection (c) calculation was determined separately. Accordingly, even if Taxpayer's method of computing the credit on a stacked basis is accepted, Taxpayer has not provided sufficient information to demonstrate that its method was correct for computing the credit under subsection (b).

Taxpayer has further raised a constitutional challenge to Indiana's credit regime, charging that it potentially discriminates against multistate businesses. The Department is not an appropriate forum to make such decisions, and accordingly this argument is denied.

FINDING

Taxpayer's protest is denied.

III. Adjusted Gross Income Tax--Inclusion of subsidiary in a consolidated return.

DISCUSSION

Taxpayer also protests the auditor's disallowance of one subsidiary in its consolidated filing. Initially, Taxpayer had not included the subsidiary in its consolidated return. However, when the Department audited the file, Taxpayer sought to include the subsidiary in its consolidated group. Taxpayer has not provided sufficient information to permit the Department to conclude that the auditor was incorrect, and accordingly is denied.

FINDING

Taxpayer's protest is denied.

IV. Tax Administration--Penalty

DISCUSSION

Taxpayer argues that it is not subject to negligence penalties with respect to the additional taxes assessed against it. In particular, Taxpayer argues that the additional tax was due to its different, but reasonable, interpretation of the statute. Accordingly, it argues that it was not negligent in its tax returns for the years in question.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;
(2) judicial precedents set by Indiana courts;
(3) judicial precedents established in jurisdictions outside Indiana;
(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer has made the requisite showing per statute and regulation, and accordingly is sustained.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 05-0199
Underground Storage Tank Fees
For the Tax Period 1991-1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Underground Storage Tank Fee- Imposition

Authority: IC 6-8.1-5-1 (b), IC 13-7-20-32, IC 13-7-20-41, IC 13-12-12-4, IC 6-8.1-1-1, IC 13-23-12-1, IC 13-11-2-150 & 151, IC 13-11-2-151(a) 1, IC 13-11-2-150.

The taxpayer protests the department's imposition of underground storage tank fees.

STATEMENT OF FACTS

The taxpayer is a corporation that operates a convenience grocery store with underground storage tanks. The taxpayer leased the real estate and operated the convenience grocery store in question from April 1, 1985 until May 1, 1996. On that date, the taxpayer purchased the real estate. After a review of the of fees paid on the taxpayer's underground storage tanks, the Indiana Department of Revenue (DOR) assessed additional underground storage tank fees for the tax period 1991-1996, interest and penalty. The taxpayer protested the imposition of the fees, interest and penalty. A hearing was held and this Letter of Findings results.

1. Underground Storage Tank Fee-Imposition

DISCUSSION

During the tax period 1991-1996, IC 13-7-20-32 and IC 13-7-20-41 imposed underground storage tank fees on the owner of underground storage tanks. Although the Indiana Department of Environmental Management (IDEM) administers the state regulation of underground storage tanks, these statutes mandate that the DOR collect and deposit the underground storage tank fees. IC 6-8.1-1-1 defines "listed tax" to include "any other tax or fee that the department is required to collect or administer." Since the DOR pursuant to statute must collect the underground storage tank fees, these fees constitute listed taxes. All of the laws and regulations concerning the DOR's collection of listed taxes apply to the DOR's collection of the underground storage tank fees. 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).

The taxpayer argued that it did not owe the unpaid storage tank fees because it was not the owner of the property with the underground storage tanks until May 1, 1996. In support of this contention the taxpayer submitted a copy of the sales agreement. This agreement specifically addressed the issue of payment of taxes, stating in relevant part as follows:

> 3. Taxes: Said real estate is sold and shall be conveyed to the Buyer free and clear of all liens and encumbrances, except a pro-rated portion of the 1996 taxes, due and payable in 1997, to be pro-rated as of the date of closing, which, together with all taxes and assessments made subsequent to the date hereof, the Buyer assumes and agrees to pay.

The liability under protest in this issue concerns the underground storage tank fees that were not paid prior to the transfer of ownership of the real estate and underground storage tanks to the taxpayer. However, during that period, the taxpayer leased the real estate from the person from whom he purchased the real estate. Under the terms of the lease agreement, the previous owner retained responsibility for the underground storage tanks and the payment of all taxes related to the real estate.

The fee is assessed based on IC 13-23-12-1 and is required of "the owner of an underground storage tank." IC 13-11-2-150 & 151 provide definitions for "Owner" and "Owner or Operator" respectively. The taxpayer, as the renter of the property, operated the station on a day to day basis. IC 13-11-2-151(a) 1 defines "Owner or operator" as "a person who owns or operates the facility." IC 13-11-2-150 has no provision to identify the "Owner" of a fuel storage tank as one involved in the operation of the facility.

IDEM records indicate that the previous owner sometimes paid the underground storage tank fees due during the tax period. These payments demonstrate that he was responsible for the payment of these fees and that he realized they were due. The IDEM records substantiate the taxpayer's contention that he has paid all underground storage tank fees due after he became the owner of the underground storage tanks.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 05-0202
Sales and Use Tax for 2005

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/Use Tax—Assessment on Purchase of Aircraft

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-2.5-3-6(d)(2); IC 6-2.5-5; IC 6-2.5-5-8(b); IC 6-6-6.5-2; IC 6-2.5-4-10(a); IC 6-2.5-2-1; FAR 1, 91, 121, 135; Form 7695; Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); Gregory v. Helving, 293 U.S. 465 (1935); Horn v. Commissioner of the Internal Revenue, 968 F.2d 1229 (D.C, Cir. 1992); Cambria Iron Co., v. Union Trust Co., 154 Ind. 291, 55 N.E. 745 (1899); *Black's Law Dictionary*, Seventh Edition.

Taxpayer protests the assessment of sales and use tax on the purchase of an aircraft Taxpayer asserts is rented and leased.

STATEMENT OF FACTS

Taxpayer is a Delaware corporation. It purchased an aircraft in October 2004 which it leases to affiliated entity, Quality, an Indiana corporation. Taxpayer filed its application for aircraft registration and claimed a sales and use tax exemption for rental or lease to others per IC 6-2.5-5-8. The Department denied the exemption, finding there was insufficient evidence to support the claim of rental or leasing. Sales and use tax were assessed. A protest was filed and a hearing was held.

I. Sales/Use Tax—Assessment on Purchase of 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).

In October 2004, Taxpayer purchased an aircraft. IC 6-2.5-3-2 imposes an excise tax, commonly 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. In the case of aircraft, taxpayers are to pay the tax directly to the Department when registering the aircraft—unless the aircraft qualifies for an exemption. IC 6-2.5-3-6(d)(2).

Exemptions to the imposition of sales and use tax exist. *See, generally,* IC 6-2.5-5. IC 6-2.5-5-8(b) exempts from sales tax, property acquired for resale, rental, or leasing in the ordinary course of the person's business. The Indiana Supreme Court has stated:

> It is well established that exemption statutes are strictly construed against a taxpayer so long as the intent and purpose of the

Indiana Legislature is not thwarted. As such, a taxpayer has the burden of establishing its entitlement to an exemption. Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003).

IC 6-6-6.5-2 requires a taxpayer to register its aircraft with the state through the Department within 31 days of the purchase date. Taxpayer filed a Form 7695 and claimed in Section D, a sale and use tax exemption for "Rental or Lease to others." IC 6-2.5-4-10(a) states that the rental or leasing of tangible personal property to another person is a retail transaction. In accord with IC 6-2.5-2-1, sales tax is to be imposed on the rental of the aircraft by Taxpayer to others. This means that sales tax is to be imposed on and collected from the related entity, Quality, when it uses Taxpayer's aircraft.

Taxpayer claims it is entitled to a sales and use tax exemption because it is engaged in the rental of the aircraft to others. This requires an analysis of the substance and form of the agreements Taxpayer has entered into with Quality. This requires a discussion of FAA regulations.

Aircraft operated in the United States are subject to strict regulation by the United States Department of Transportation, Federal Aviation Administration. Among its responsibilities and duties, the FAA regulates the registration, airworthiness certification, and continued operational safety of aircraft. Title 14, Chapter I of the Code of Federal Regulations contain the FAA's regulations (FAR). The regulations are organized by Parts and Subparts. Part 91 contains the general operating and flight rules. In general—with few exceptions not relevant to this protest before the Department—Part 91 applies to the operation of all aircraft and regulates all persons on board an aircraft. *See* FAR § 91.1. FAR § 91.315 and FAR § 91.325 do not permit a person to operate an aircraft for compensation or hire to carry others or to carry property. Operations for compensation and hire are regulated by Parts 121 and 135. Part 121 regulates operations of a commercial airliner and Part 135 regulates operations of a charter or air-taxi service. Those whose business is the transportation for compensation and hire under Part 121 and Part 135 are held to higher, stricter operating standards. Taxpayer has acknowledged these facts and has noted that the acquisition of a Part 121 or Part 135 certification is time-consuming and expensive.

Those operating solely under Part 91 authority operate in personal transportation of themselves only. Guests and other passengers are to be transported for no charge. FAR § 91.501 does name the narrow exceptions permitted to recover specific expenses for demonstrations to prospective customers, the carriage of property within the scope of business or employment, and in time-share agreements. But in general, those operating under Part 91 are required to operate in personal transportation only. Under Part 91, the FAA highly restricts the carriage of property and others for hire and compensation. It does permit the leasing of an aircraft to others, but to do so and remain within the requirements of Part 91, the operational control of the aircraft has to be transferred from the owner of the aircraft to the user of the aircraft. This type of lease is termed a dry lease. Operational control is defined in FAR § 1.1 as the exercise of authority over initiating, conducting or terminating a flight.

In a dry lease, the owner of the aircraft only charges for the physical use of the aircraft—with no charges for incidental costs. The lessee is required and responsible to provide and pay the costs for pilots, operational supplies, and maintenance under the requirements of Part 91. When a dry lease is used, the FAA does not consider the use of the aircraft to be a transportation service.

Quality has a need for an aircraft to transport its officers and employees. Because Taxpayer and Quality are related, many of the officers and employees of Taxpayer and Quality are the same persons. If Quality had purchased an aircraft or a fractional share in an aircraft, sales tax would have been due because the aircraft was acquired in a retail transaction and no exemption exists. But if the aircraft is purchased by an affiliated company and it holds the asset, those who seek to benefit their primary business enterprises can purchase the aircraft in an attempt to avoid paying sales tax by claiming to "rent" the aircraft to themselves. The 6% sales tax on $416,150 is $24,969. That is a substantial amount to seek to avoid paying. But in order to comply with FAA Part 91 requirements, Taxpayer cannot operate the aircraft on behalf of Quality. Under FAA regulations, control of the aircraft has to be placed with Quality. Taxpayer claims that the placement of the aircraft into a separate entity serves to insulate it from liability. But Taxpayer does not and may not operate the aircraft—it merely holds the asset for the benefit of the related entity, Quality.

Taxpayer does not and cannot operate the aircraft because the sole purpose for the creation of Taxpayer as a business entity is to hold the aircraft as an asset. If it operates the aircraft it becomes a transportation company and is held to the higher FAA regulations of Part 135. Part 91 requires that a lessee in a dry lease provide and pay for operation expenses, such as pilot services, maintenance, fuel, and insurance. FAR § 91.403 states that those with operational control are responsible for maintaining an aircraft in an airworthy condition.

Taxpayer stated in its brief submitted to Department that the reason that the aircraft is held in a separate entity is for liability reasons.

> The use of a subsidiary company provides some asset protection. Because there is only a handful of insurance companies in the aircraft insurance business, there is no adequate source of liability insurance for Part 91 operators.
>
> …
>
> In the case of Part 91 operators, the aircraft is held in a separate corporation primarily for liability reasons. As a general rule, Part 91 operators can obtain no more than $100,000 per seat in liability coverage which is far below any actual potential damages resulting in injury or death to a passenger.

Taxpayer and the affiliated company, Quality, seek to limit liability and protect assets. But under Part 91, operational control has to be transferred to the lessee, it is the lessee—Quality—that bears liability when operating the aircraft.

Application of the Sham Transaction Doctrine

The lease agreement and the effect of the operation of the aircraft fall squarely within the doctrine of sham transaction. The sham transaction doctrine is well establish in state and federal tax jurisprudence. In Gregory v. Helving, 293 U.S. 465, 469 (1935), the United States Supreme Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and to hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose. *Id.* at 470. Transactions invalidated by the sham transaction doctrine are those motivated by nothing more than the taxpayer's desire to secure the attached tax benefit but are devoid of any economic substance. *See* Horn v. Commissioner of the Internal Revenue, 968 F.2d 1229, 1236-7 (D.C. Cir. 1992).

If Quality was required to purchase transportation services in accordance with FAA regulations, it would need to secure a third-party to provide it with air travel services—operating under Part 121, an airline, or under Part 135, an air-taxi/charter service. What Quality would pay to the third-party would be applied to the costs of third-party to have purchased an aircraft and to operate that aircraft. But Quality does not wish to pay those costs—and it need not. What Quality wants is an aircraft of its own that it can control. And that is what Quality has acquired. The acquisition of the aircraft triggered sales and use tax. Taxpayer and Quality structured the transaction to secure the benefits of an exemption—but did not assume the associated burdens. The Indiana Supreme Court has stated that a party cannot have the benefits without the burdens. *See* Cambria Iron Co., v. Union Trust Co., 154 Ind. 291, 301-02; 55 N.E. 745, 749 (1899).

Taxpayer has secured the tax benefit of avoiding sales and use tax on the purchase of the aircraft. Additionally, because of the requirements of FAA regulations, Taxpayer cannot operate the aircraft on behalf of its related company; Taxpayer has to give the aircraft and operational control to Quality, who is required to maintain the aircraft and pay the necessary associated expenses. The rental rate is set to cover the cost of using the aircraft asset—and that is all that can be charged and still comply with FAA regulations. The hourly rental rate is $70.00. Taxpayer acknowledges a comparable fair market value comparison rate is around $250 per hour. Taxpayer states that the rental rate paid by the affiliated company, Quality, is reduced because it is responsible for maintaining the aircraft. The net effect of all this is Quality gets what it wanted all along—control and use of an aircraft; but it has avoided the upfront, one-time cost of having to pay the sales and use tax due. If Quality had purchased the aircraft outright, it still would be responsible for the associated costs of operating and maintaining the aircraft. But by structuring the transaction as Quality has, while it still pays those associated costs, the lease payments made to Taxpayer remain in the coffers of the those who have ownership interests—the members and shareholders. The lease payment is a wash. As well, the lease payments due to Taxpayer are reduced to reflect the assumption of the associated costs by the related companies. The net effect is that negligible sales tax is imposed, collected, and remitted on what is a transaction without economic substance. The business of America is business—and no business is generated here.

The relationship between Taxpayer and Quality is interfamilial. On the lease, the person who signed as president for Taxpayer is the same person who signs as president of the related company. There is no arms-length transaction to others; these are one and the same persons benefiting. IC 6-2.5-5-8(b) grants a sales tax exemption if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business. *Black's Law Dictionary*, Seventh Edition, defines business as "a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain." Taxpayer purports to operates as a business a business, yet does not have a profit motive; Taxpayer has stated that the purpose of establishing the separate entity to hold the aircraft is for liability benefits. The sales and use tax exemption for resale, rental, or leasing in the ordinary course of the person's business is not granted for those seeking to secure liability benefits; it is granted to those with a profit motive who will generate revenues from rental and lease transactions upon which sales tax is imposed. Taxpayer is not engaged in rental or leasing for the purposes of the sales and use tax statutes.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420050242.LOF

LETTER OF FINDINGS NUMBER: 05-0242
Sales and Use Tax for 2005

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/Use Tax—Assessment on Purchase of Aircraft

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-2.5-3-6(d)(2); IC 6-2.5-5; IC 6-2.5-5-8(b); IC 6-6-6.5-2; IC 6-2.5-4-10(a); IC 6-2.5-2-

1; FAR 1, 91, 121, 135; Form 7695; Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); Gregory v. Helving, 293 U.S. 465 (1935); Horn v. Commissioner of the Internal Revenue, 968 F.2d 1229 (D.C, Cir. 1992); Cambria Iron Co., v. Union Trust Co., 154 Ind. 291, 55 N.E. 745 (1899); *Black's Law Dictionary*, Seventh Edition.

Taxpayer protests the assessment of sales and use tax on the purchase of an aircraft Taxpayer asserts is rented and leased.

STATEMENT OF FACTS

Taxpayer is a corporation. It purchased an aircraft in May 2004 which it leases to affiliated entity, Superior, a corporation. Taxpayer filed its application for aircraft registration and claimed a sales and use tax exemption for rental or lease to others per IC 6-2.5-5-8. The Department denied the exemption, finding there was insufficient evidence to support the claim of rental or leasing. Sales and use tax were assessed. A protest was filed and a hearing was held.

I. Sales/Use Tax—Assessment on Purchase of 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).

In May 2004, Taxpayer purchased an aircraft. IC 6-2.5-3-2 imposes an excise tax, commonly 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. In the case of aircraft, taxpayers are to pay the tax directly to the Department when registering the aircraft—unless the aircraft qualifies for an exemption. IC 6-2.5-3-6(d)(2).

Exemptions to the imposition of sales and use tax exist. *See, generally,* IC 6-2.5-5. IC 6-2.5-5-8(b) exempts from sales tax, property acquired for resale, rental, or leasing in the ordinary course of the person's business. The Indiana Supreme Court has stated:

> It is well established that exemption statutes are strictly construed against a taxpayer so long as the intent and purpose of the Indiana Legislature is not thwarted. As such, a taxpayer has the burden of establishing its entitlement to an exemption.
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> Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003).

IC 6-6-6.5-2 requires a taxpayer to register its aircraft with the state through the Department within 31 days of the purchase date. Taxpayer filed a Form 7695 and claimed in Section D, a sale and use tax exemption for "Rental or Lease to others." IC 6-2.5-4-10(a) states that the rental or leasing of tangible personal property to another person is a retail transaction. In accord with IC 6-2.5-2-1, sales tax is to be imposed on the rental of the aircraft by Taxpayer to others. This means that sales tax is to be imposed on and collected from the related entity, Superior, when it uses Taxpayer's aircraft.

Taxpayer claims it is entitled to a sales and use tax exemption because it is engaged in the rental of the aircraft to others. This requires an analysis of the substance and form of the agreements Taxpayer has entered into with Superior. This requires a discussion of FAA regulations.

Aircraft operated in the United States are subject to strict regulation by the United States Department of Transportation, Federal Aviation Administration. Among its responsibilities and duties, the FAA regulates the registration, airworthiness certification, and continued operational safety of aircraft. Title 14, Chapter I of the Code of Federal Regulations contain the FAA's regulations (FAR). The regulations are organized by Parts and Subparts. Part 91 contains the general operating and flight rules. In general—with few exceptions not relevant to this protest before the Department—Part 91 applies to the operation of all aircraft and regulates all persons on board an aircraft. *See* FAR § 91.1. FAR § 91.315 and FAR § 91.325 do not permit a person to operate an aircraft for compensation or hire to carry others or to carry property. Operations for compensation and hire are regulated by Parts 121 and 135. Part 121 regulates operations of a commercial airliner and Part 135 regulates operations of a charter or air-taxi service. Those whose business is the transportation for compensation and hire under Part 121 and Part 135 are held to higher, stricter operating standards. Taxpayer has acknowledged these facts and has noted that the acquisition of a Part 121 or Part 135 certification is time-consuming and expensive.

Those operating solely under Part 91 authority operate in personal transportation of themselves only. Guests and other passengers are to be transported for no charge. FAR § 91.501 does name the narrow exceptions permitted to recover specific expenses for demonstrations to prospective customers, the carriage of property within the scope of business or employment, and in time-share agreements. But in general, those operating under Part 91 are required to operate in personal transportation only. Under Part 91, the FAA highly restricts the carriage of property and others for hire and compensation. It does permit the leasing of an aircraft to others, but to do so and remain within the requirements of Part 91, the operational control of the aircraft has to be transferred from the owner of the aircraft to the user of the aircraft. This type of lease is termed a dry lease. Operational control is defined in FAR § 1.1 as the exercise of authority over initiating, conducting or terminating a flight.

In a dry lease, the owner of the aircraft only charges for the physical use of the aircraft—with no charges for incidental costs. The lessee is required and responsible to provide and pay the costs for pilots, operational supplies, and maintenance under the requirements of Part 91. When a dry lease is used, the FAA does not consider the use of the aircraft to be a transportation service.

Superior has a need for an aircraft to transport its officers and employees. Because Taxpayer and Superior are related, many of the officers and employees of Taxpayer and Superior are the same persons. If Superior had purchased an aircraft or a fractional share in an aircraft, sales tax would have been due because the aircraft was acquired in a retail transaction and no exemption exists. But if the aircraft is purchased by an affiliated company and it holds the asset, those who seek to benefit their primary business

enterprises can purchase the aircraft in an attempt to avoid paying sales tax by claiming to "rent" the aircraft to themselves. The 6% sales tax on $3,500,000 is $210,000. That is a substantial amount to seek to avoid paying. But in order to comply with FAA Part 91 requirements, Taxpayer cannot operate the aircraft on behalf of Superior. Under FAA regulations, control of the aircraft has to be placed with Superior. Taxpayer claims that the placement of the aircraft into a separate entity serves to insulate it from liability. But Taxpayer does not and may not operate the aircraft—it merely holds the asset for the benefit of the related entity, Superior.

Taxpayer does not and cannot operate the aircraft because the sole purpose for the creation of Taxpayer as a business entity is to hold the aircraft as an asset. If it operates the aircraft it becomes a transportation company and is held to the higher FAA regulations of Part 135. Part 91 requires that a lessee in a dry lease provide and pay for operation expenses, such as pilot services, maintenance, fuel, and insurance. FAR § 91.403 states that those with operational control are responsible for maintaining an aircraft in an airworthy condition.

> Taxpayer stated in its brief submitted to Department that the reason that the aircraft is held in a separate entity is for liability reasons. The use of a subsidiary company provides some asset protection. Because there is only a handful of insurance companies in the aircraft insurance business, there is no adequate source of liability insurance for Part 91 operators.
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> …
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> In the case of Part 91 operators, the aircraft is held in a separate corporation primarily for liability reasons. As a general rule, Part 91 operators can obtain no more than $100,000 per seat in liability coverage which is far below any actual potential damages resulting in injury or death to a passenger.

Taxpayer and the affiliated company, Superior, seek to limit liability and protect assets. But under Part 91, operational control has to be transferred to the lessee, it is the lessee—Superior—that bears liability when operating the aircraft.

Application of the Sham Transaction Doctrine

The lease agreement and the effect of the operation of the aircraft fall squarely within the doctrine of sham transaction. The sham transaction doctrine is well establish in state and federal tax jurisprudence. In Gregory v. Helving, 293 U.S. 465, 469 (1935), the United States Supreme Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and to hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose. *Id.* at 470. Transactions invalidated by the sham transaction doctrine are those motivated by nothing more than the taxpayer's desire to secure the attached tax benefit but are devoid of any economic substance. *See* Horn v. Commissioner of the Internal Revenue, 968 F.2d 1229, 1236-7 (D.C. Cir. 1992).

If Superior was required to purchase transportation services in accordance with FAA regulations, it would need to secure a third-party to provide it with air travel services—operating under Part 121, an airline, or under Part 135, an air-taxi/charter service. What Superior would pay to the third-party would be applied to the costs of third-party to have purchased an aircraft and to operate that aircraft. But Superior does not wish to pay those costs—and it need not. What Superior wants is an aircraft of its own that it can control. And that is what Superior has acquired. The acquisition of the aircraft triggered sales and use tax. Taxpayer and Superior structured the transaction to secure the benefits of an exemption—but did not assume the associated burdens. The Indiana Supreme Court has stated that a party cannot have the benefits without the burdens. *See* Cambria Iron Co., v. Union Trust Co., 154 Ind. 291, 301-02; 55 N.E. 745, 749 (1899).

Taxpayer has secured the tax benefit of avoiding sales and use tax on the purchase of the aircraft. Additionally, because of the requirements of FAA regulations, Taxpayer cannot operate the aircraft on behalf of its related company; Taxpayer has to give the aircraft and operational control to Superior, who is required to maintain the aircraft and pay the necessary associated expenses. The rental rate is set to cover the cost of using the aircraft asset—and that is all that can be charged and still comply with FAA regulations. The hourly rental rate is $900. Taxpayer acknowledges a comparable fair market value comparison rate is around $3,000 per hour. Taxpayer states that the rental rate paid by the affiliated company, Superior, is reduced because it is responsible for maintaining the aircraft. The net effect of all this is Superior gets what it wanted all along—control and use of an aircraft; but it has avoided the upfront, one-time cost of having to pay the sales and use tax due. If Superior had purchased the aircraft outright, it still would be responsible for the associated costs of operating and maintaining the aircraft. But by structuring the transaction as Superior has, while it still pays those associated costs, the lease payments made to Taxpayer remain in the coffers of the those who have ownership interests—the members and shareholders. The lease payment is a wash. As well, the lease payments due to Taxpayer are reduced to reflect the assumption of the associated costs by the related companies. The net effect is that negligible sales tax is imposed, collected, and remitted on what is a transaction without economic substance. The business of America is business—and no business is generated here.

The relationship between Taxpayer and Superior is interfamilial. On the lease, the person who signed for Taxpayer is related to the person who signed for the related company. There is no arms-length transaction to others; Superior is the one benefiting. IC 6-2.5-5-8(b) grants a sales tax exemption if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business. *Black's Law Dictionary*, Seventh Edition, defines business as "a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain." Taxpayer purports to operate as a

business, yet does not have a profit motive; Taxpayer has stated that the purpose of establishing the separate entity to hold the aircraft is for liability benefits. The sales and use tax exemption for resale, rental, or leasing in the ordinary course of the person's business is not granted for those seeking to secure liability benefits; it is granted to those with a profit motive who will generate revenues from rental and lease transactions upon which sales tax is imposed. Taxpayer is not engaged in rental or leasing for the purposes of the sales and use tax statutes.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420050261.LOF

LETTER OF FINDINGS NUMBER: 05-0261
Sales and Use Tax for 2005

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/Use Tax—Assessment on Purchase of Aircraft

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-2.5-3-6(d)(2); IC 6-2.5-5; IC 6-2.5-5-8(b); IC 6-6-6.5-2; IC 6-2.5-4-10(a); IC 6-2.5-2-1; FAR 1, 91, 121, 135; Form 7695; Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); Gregory v. Helving, 293 U.S. 465 (1935); Horn v. Commissioner of the Internal Revenue, 968 F.2d 1229 (D.C, Cir. 1992); Cambria Iron Co., v. Union Trust Co., 154 Ind. 291, 55 N.E. 745 (1899); *Black's Law Dictionary*, Seventh Edition.

Taxpayer protests the assessment of sales and use tax on the purchase of an aircraft Taxpayer asserts is rented and leased.

STATEMENT OF FACTS

Taxpayer is a Delaware corporation. It purchased an aircraft in April 2004 which it leases to affiliated entity, Flyers, an Indiana corporation. Taxpayer filed its application for aircraft registration and claimed a sales and use tax exemption for rental or lease to others per IC 6-2.5-5-8. The Department denied the exemption, finding there was insufficient evidence to support the claim of rental or leasing. Sales and use tax were assessed. A protest was filed and a hearing was held.

I. Sales/Use Tax—Assessment on Purchase of 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).

In April 2004, Taxpayer purchased an aircraft. IC 6-2.5-3-2 imposes an excise tax, commonly 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. In the case of aircraft, taxpayers are to pay the tax directly to the Department when registering the aircraft—unless the aircraft qualifies for an exemption. IC 6-2.5-3-6(d)(2).

Exemptions to the imposition of sales and use tax exist. *See*, generally, IC 6-2.5-5. IC 6-2.5-5-8(b) exempts from sales tax, property acquired for resale, rental, or leasing in the ordinary course of the person's business. The Indiana Supreme Court has stated:

> It is well established that exemption statutes are strictly construed against a taxpayer so long as the intent and purpose of the Indiana Legislature is not thwarted. As such, a taxpayer has the burden of establishing its entitlement to an exemption.
> Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003).

IC 6-6-6.5-2 requires a taxpayer to register its aircraft with the state through the Department within 31 days of the purchase date. Taxpayer filed a Form 7695 and claimed in Section D, a sale and use tax exemption for "Rental or Lease to others." IC 6-2.5-4-10(a) states that the rental or leasing of tangible personal property to another person is a retail transaction. In accord with IC 6-2.5-2-1, sales tax is to be imposed on the rental of the aircraft by Taxpayer to others. This means that sales tax is to be imposed on and collected from the related entity, Flyers, when it uses Taxpayer's aircraft.

Taxpayer claims it is entitled to a sales and use tax exemption because it is engaged in the rental of the aircraft to others. This requires an analysis of the substance and form of the agreements Taxpayer has entered into with Flyers. This requires a discussion of FAA regulations.

Aircraft operated in the United States are subject to strict regulation by the United States Department of Transportation, Federal Aviation Administration. Among its responsibilities and duties, the FAA regulates the registration, airworthiness certification, and continued operational safety of aircraft. Title 14, Chapter I of the Code of Federal Regulations contain the FAA's regulations (FAR). The regulations are organized by Parts and Subparts. Part 91 contains the general operating and flight rules. In general—with few exceptions not relevant to this protest before the Department—Part 91 applies to the operation of all aircraft and regulates all persons

on board an aircraft. *See* FAR § 91.1. FAR § 91.315 and FAR § 91.325 do not permit a person to operate an aircraft for compensation or hire to carry others or to carry property. Operations for compensation and hire are regulated by Parts 121 and 135. Part 121 regulates operations of a commercial airliner and Part 135 regulates operations of a charter or air-taxi service. Those whose business is the transportation for compensation and hire under Part 121 and Part 135 are held to higher, stricter operating standards. Taxpayer has acknowledged these facts and has noted that the acquisition of a Part 121 or Part 135 certification is time-consuming and expensive.

Those operating solely under Part 91 authority operate in personal transportation of themselves only. Guests and other passengers are to be transported for no charge. FAR § 91.501 does name the narrow exceptions permitted to recover specific expenses for demonstrations to prospective customers, the carriage of property within the scope of business or employment, and in time-share agreements. But in general, those operating under Part 91 are required to operate in personal transportation only. Under Part 91, the FAA highly restricts the carriage of property and others for hire and compensation. It does permit the leasing of an aircraft to others, but to do so and remain within the requirements of Part 91, the operational control of the aircraft has to be transferred from the owner of the aircraft to the user of the aircraft. This type of lease is termed a dry lease. Operational control is defined in FAR § 1.1 as the exercise of authority over initiating, conducting or terminating a flight.

In a dry lease, the owner of the aircraft only charges for the physical use of the aircraft—with no charges for incidental costs. The lessee is required and responsible to provide and pay the costs for pilots, operational supplies, and maintenance under the requirements of Part 91. When a dry lease is used, the FAA does not consider the use of the aircraft to be a transportation service.

Flyers has a need for an aircraft to transport its officers and employees. Because Taxpayer and Flyers are related, many of the officers and employees of Taxpayer and Flyers are the same persons. If Flyers had purchased an aircraft or a fractional share in an aircraft, sales tax would have been due because the aircraft was acquired in a retail transaction and no exemption exists. But if the aircraft is purchased by an affiliated company and it holds the asset, those who seek to benefit their primary business enterprises can purchase the aircraft in an attempt to avoid paying sales tax by claiming to "rent" the aircraft to themselves. The 6% sales tax on $205,000 is $12,300. That is a substantial amount to seek to avoid paying. But in order to comply with FAA Part 91 requirements, Taxpayer cannot operate the aircraft on behalf of Flyers. Under FAA regulations, control of the aircraft has to be placed with Flyers. Taxpayer claims that the placement of the aircraft into a separate entity serves to insulate it from liability. But Taxpayer does not and may not operate the aircraft—it merely holds the asset for the benefit of the related entity, Flyers.

Taxpayer does not and cannot operate the aircraft because the sole purpose for the creation of Taxpayer as a business entity is to hold the aircraft as an asset. If it operates the aircraft it becomes a transportation company and is held to the higher FAA regulations of Part 135. Part 91 requires that a lessee in a dry lease provide and pay for operation expenses, such as pilot services, maintenance, fuel, and insurance. FAR § 91.403 states that those with operational control are responsible for maintaining an aircraft in an airworthy condition.

> Taxpayer stated in its brief submitted to Department that the reason that the aircraft is held in a separate entity is for liability reasons. The use of a subsidiary company provides some asset protection. Because there is only a handful of insurance companies in the aircraft insurance business, there is no adequate source of liability insurance for Part 91 operators.
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> In the case of Part 91 operators, the aircraft is held in a separate corporation primarily for liability reasons. As a general rule, Part 91 operators can obtain no more than $100,000 per seat in liability coverage which is far below any actual potential damages resulting in injury or death to a passenger.

Taxpayer and the affiliated company, Flyers, seek to limit liability and protect assets. But under Part 91, operational control has to be transferred to the lessee, it is the lessee—Flyers—that bears liability when operating the aircraft.

Application of the Sham Transaction Doctrine

The lease agreement and the effect of the operation of the aircraft fall squarely within the doctrine of sham transaction. The sham transaction doctrine is well establish in state and federal tax jurisprudence. In Gregory v. Helving, 293 U.S. 465, 469 (1935), the United States Supreme Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and to hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose. *Id.* at 470. Transactions invalidated by the sham transaction doctrine are those motivated by nothing more than the taxpayer's desire to secure the attached tax benefit but are devoid of any economic substance. *See* Horn v. Commissioner of the Internal Revenue, 968 F.2d 1229, 1236-7 (D.C. Cir. 1992).

If Flyers was required to purchase transportation services in accordance with FAA regulations, it would need to secure a third-party to provide it with air travel services—operating under Part 121, an airline, or under Part 135, an air-taxi/charter service. What Flyers would pay to the third-party would be applied to the costs of third-party to have purchased an aircraft and to operate that aircraft. But Flyers does not wish to pay those costs—and it need not. What Flyers wants is an aircraft of its own that it can control. And that is what Flyers has acquired. The acquisition of the aircraft triggered sales and use tax. Taxpayer and Flyers structured the transaction to secure the benefits of an exemption—but did not assume the associated burdens. The Indiana Supreme Court has stated that a party cannot have the benefits without the burdens. *See* Cambria Iron Co., v. Union Trust Co., 154 Ind. 291, 301-02; 55 N.E. 745, 749 (1899).

Taxpayer has secured the tax benefit of avoiding sales and use tax on the purchase of the aircraft. Additionally, because of the requirements of FAA regulations, Taxpayer cannot operate the aircraft on behalf of its related company; Taxpayer has to give the aircraft and operational control to Flyers, who is required to maintain the aircraft and pay the necessary associated expenses. The rental rate is set to cover the cost of using the aircraft asset—and that is all that can be charged and still comply with FAA regulations. The hourly rental rate is $150. Taxpayer acknowledges a comparable fair market value comparison rate is over $400 per hour. Taxpayer states that the rental rate paid by the affiliated company, Flyers, is reduced because it is responsible for maintaining the aircraft. The net effect of all this is Flyers gets what it wanted all along—control and use of an aircraft; but it has avoided the upfront, one-time cost of having to pay the sales and use tax due. If Flyers had purchased the aircraft outright, it still would be responsible for the associated costs of operating and maintaining the aircraft. But by structuring the transaction as Flyers has, while it still pays those associated costs, the lease payments made to Taxpayer remain in the coffers of the those who have ownership interests—the members and shareholders. The lease payment is a wash. As well, the lease payments due to Taxpayer are reduced to reflect the assumption of the associated costs by the related companies. The net effect is that negligible sales tax is imposed, collected, and remitted on what is a transaction without economic substance. The business of America is business—and no business is generated here.

The relationship between Taxpayer and Flyers is interfamilial. On the lease, the person who signed as president for Taxpayer is the same person who signs as president of the related company. There is no arms-length transaction to others; these are one and the same persons benefiting. IC 6-2.5-5-8(b) grants a sales tax exemption if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business. *Black's Law Dictionary*, Seventh Edition, defines business as "a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain." Taxpayer purports to operate as a business, yet does not have a profit motive; Taxpayer has stated that the purpose of establishing the separate entity to hold the aircraft is for liability benefits. The sales and use tax exemption for resale, rental, or leasing in the ordinary course of the person's business is not granted for those seeking to secure liability benefits; it is granted to those with a profit motive who will generate revenues from rental and lease transactions upon which sales tax is imposed. Taxpayer is not engaged in rental or leasing for the purposes of the sales and use tax statutes.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2005-02URT
October 17, 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.

ISSUES

Utility Receipts Tax – Nexus

Authority: IC 6-2.3-2-1, IC 6-2.3-4-2, IC 6-2.3-1-4

The taxpayer requests the Department to rule whether or not the taxpayer has sufficient nexus with Indiana under any of the following scenarios to be subject to Utility Receipts Tax.

STATEMENT OF FACTS

The taxpayer is a non-resident engaged in the business of marketing natural gas to large industrial consumers and other wholesalers of natural gas located in Indiana. On a national level, about ten percent (10%) of the taxpayer's business is large industrial end-user consumers and the remaining sales are wholesale sales. In Indiana, however, nearly 100% of the taxpayer's sales are to large industrial consumers.

DISCUSSION – ISSUE #1
FLASH TITLE

The taxpayer uses the North American Energy Standards Board (the "NAESB") standard buy/sell agreement (the "Contract") as the basis of all of its natural gas sales. Sales under the Contract are typically specified in a confirmation that is determined on a periodic basis and contains specific details such as the amount of gas to be purchased, the price, the delivery details, etc. All the activity in connection with the Contract and confirmations such as the negotiations, acceptance of orders, right of approval or rejection, etc. are executed from the taxpayer's office outside the state of Indiana. The taxpayer does not maintain an office or other place of business in Indiana and does not have employees or agents in Indiana. The taxpayer does not maintain any natural gas inventory in Indiana. The taxpayer communicates with its Indiana customers via telephone or e-mail.

Sales of natural gas to customers in Indiana are back-to-back purchases and sales. A "back-to-back sale" occurs when a gas

marketer, such as the taxpayer, purchases gas in the open market from a third party gas marketer or utility that is on the interstate pipeline at a point within Indiana and then sells the purchased gas at the exact same point to an Indiana consumer. Consequently, the taxpayer has title to the natural gas for a moment in time (flash title) in Indiana, the same moment in time the title is transferred to the ultimate consumer by operation of law. The taxpayer does not transport the gas, as it does not own or have a right to transport on the interstate pipeline associated with these Indiana sales. The consumer, having title, contracts with a local gas distribution company to transport the gas to their facility for consumption.

IC 6-2.3-2-1 states:

Sec. 1. An income tax, known as the utility receipts tax, is imposed upon the receipt of:

1. the entire taxable gross receipts of a taxpayer that is a resident or domiciliary of Indiana, and
2. the taxable gross receipts derived from activities or businesses or any other sources within Indiana by a taxpayer that is not a resident or domiciliary of Indiana.

IC 6-2.3-4-2 states:

Sec. 2. Gross receipts derived from business conducted in commerce between Indiana and either another state or territory or foreign country are exempt from utility receipts tax to the extent the state is prohibited from taxiing the gross receipts by the Constitution of the United States.

It is clear then, Utility Receipts Tax is imposed on the taxable gross receipts from sources within Indiana by a taxpayer that is not a resident or domiciliary of Indiana to the extent Indiana is not prohibited from taxing the gross receipts by the United States Constitution.

In this issue, all of the taxpayer's activities giving rise to its income from Indiana occur outside Indiana with the exception of flash title. The Department equates flash title with ownership of natural gas inventory in Indiana. The inventory is sold to Indiana customers. The inventory in Indiana creates substantial nexus for the taxpayer with Indiana under Commerce Clause jurisprudence, therefore, the taxpayer's Indiana receipts are subject to Utility Receipts Tax.

RULING – ISSUE #1

The Department rules flash title of inventory in Indiana creates substantial nexus with Indiana, therefore, the Taxpayer's receipts from Indiana are subject to Utility Receipts Tax.

DISCUSSION – ISSUE #1A
FLASH TITLE AND 2 INCIDENTAL VISITS

The facts are the same as Issue #1 (flash title) with one addition: as a matter of happenstance, a taxpayer employee may make up to two (2) day trips to Indiana in a four (4) year period. Such trips would not be regular or systematic visits, but would be isolated and infrequent, although both may occur in one calendar year when no visits had occurred in the preceding three years. The visits do exceed "mere solicitation" and any "ancillary activities".

Having determined that Issue #1 (flash title) creates substantial nexus for the taxpayer with Indiana, a determination is not required on this issue.

RULING-ISSUE #1A

A ruling is not applicable.

DISCUSSION – ISSUE #1B
FLASH TITLE AND 12 ANNUAL VISITS

The facts are the same as those in Issue #1 (flash title) with one addition: a taxpayer employee would visit Indiana regularly to meet with two (2) or three (3) customers per visit.

Having determined that Issue # 1 (flash title) creates substantial nexus for the taxpayer with Indiana, a determination is not required on this issue.

RULING-ISSUE #1B

A ruling is not applicable.

DISCUSSION – ISSUE #2
LOGISTICS SERVICES

The same facts as Issue #1 except that the taxpayer would have no activities in Indiana because instead of selling gas to Indiana customers that would necessitate the taxpayer having flash title in Indiana, the taxpayer would do nothing other than perform service outside Indiana for the Indiana customers. The taxpayer would be its Indiana customer's agent in managing a customer's transportation account with a third-party utility. Under this set of facts, the taxpayer does **not** sell natural gas to Indiana end users, but would solely schedule transportation of the natural gas between buyer and seller from a location outside Indiana. The seller would send an invoice to "the taxpayer as agent on behalf of customer" for the natural gas and the transportation services. The taxpayer, acting in its agency capacity, would pay the entire amount of the invoice. The taxpayer would then invoice its customer for the charges the taxpayer incurred on the customer's behalf as customer's agent such as costs related to the cost of the natural gas, the transportation service, and any logistical services the taxpayer provided.

All contracts for the purchase and transportation of the natural gas would be between the Indiana customer and the seller. The taxpayer would schedule the transportation; however, it would **not** take title to or make any purchase of the natural gas. As in Issue

#1, the taxpayer would not transport, own, or have a right to transport the natural gas on the interstate pipelines. The taxpayer would receive a fee for services of managing the Indiana customers' transportation, not for selling natural gas to Indiana customers. All the taxpayer activities related to the scheduling of the transportation would be performed at the taxpayer's headquarters outside of Indiana. The taxpayer will have no property in Indiana, and its employees would not enter Indiana to perform any duties.

Finally, in the event that the Indiana customer has excess volumes of natural gas, the taxpayer could also act on the Indiana customer's behalf by providing re-marketing services outside Indiana for an additional fee.

All of the taxpayer's activities giving rise to its income from Indiana occur outside of Indiana. Further, the taxpayer is not receiving consideration for the retail sale of utility services for consumption. IC 6-2.3-1-4. The taxpayer's receipts are from logistics services, therefore, are not subject to Utility Receipts Tax.

RULING –ISSUE #2

The Department rules the taxpayer's Indiana receipts from logistics services are not subject to Utility Receipts Tax.

DISCUSSION-ISSUE #3

TWO LINES OF BUSINESS, NO TRANSPORTATION

The facts in Issue #1 (flash title), #1A (2 incidental visits), and then #1B (12 annual visits) are combined each in turn with facts in Issue #2 (logistics services) to give the taxpayer receipts from two distinct lines of business. Moreover, in this fact scenario, the taxpayer does **not** either transport or obtain the right to transport natural gas on the interstate pipelines.

The Department has ruled in Issue #2 the taxpayer's receipts from logistics services are not subject to Utility Receipts Tax because all of the taxpayer's activities giving rise to its income from Indiana occurs outside Indiana and the taxpayer's receipts are not from the retail sale of utility services for consumption.

In the instant case, the taxable rulings of Issues #1, #1A and #1B do not cause the nontaxable ruling of Issue #2 to change.

RULING – ISSUE #3

The Department rules the taxpayer's Indiana receipts from logistics services are not taxable when coupled with Issues #1, #1A and #1B which are taxable.

DISCUSSION – ISSUE #4

DELIVERY BY TAXPAYER

The facts are identical to those under Issue #1 (flash title) with the following exceptions:

1. the natural gas is transported by the taxpayer, not a third party utility, to the Indiana customer via common carrier (the interstate pipeline). The taxpayer takes title to the natural gas and also bears the risk of loss during transportation; and
2. the natural gas is purchased outside Indiana by the taxpayer, which eliminates flash title resulting in no natural gas inventory in Indiana.

Here, the taxpayer purchases natural gas outside Indiana and transports the natural gas to its Indiana buyer via common carrier (interstate pipeline). Further, all the taxpayer's activities generating receipts from Indiana customers are performed outside Indiana. Commerce Clause jurisprudence dictates that these receipts are not subject to Utility Receipts Tax.

RULING – ISSUE #4

The Department rules the taxpayer's receipts from the sale of natural gas to Indiana customers, that was purchased outside Indiana and transported by the taxpayer via common carrier to Indiana customers, are not subject to Utility Receipts Tax.

DISCUSSION – ISSUE #5

TWO LINES OF BUSINESS, TRANSPORTATION

The facts in Issue #1(flash title), #1A (2 incidental visits), and then #1B (12 annual visits) are combined each in turn with facts in Issue #4 (delivery by taxpayer) to give the taxpayer receipts from two distinct lines of business. Moreover, in this fact scenario, the taxpayer **does** either transport or obtain the right to transport natural gas on the interstate pipelines.

Having determined that Issues #1, #1A and #1B create substantial nexus for the taxpayer with Indiana, any combination of these issues with Issue #4 will create substantial nexus for the taxpayer with Indiana. A determination, therefore, is not required on this issue.

RULING – ISSUE #5

A ruling is not applicable.

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.

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION				
25 IAC 5-3-2	A	05-25	28 IR 2761	**29 IR 450**
25 IAC 5-3-5	A	05-25	28 IR 2762	**29 IR 451**
25 IAC 5-3-6	A	05-25	28 IR 2764	**29 IR 453**
25 IAC 5-4-1	A	05-25	28 IR 2765	**29 IR 454**
25 IAC 5-4-2	A	05-25	28 IR 2766	**29 IR 455**
25 IAC 5-6-2	A	05-25	28 IR 2766	**29 IR 455**
25 IAC 6	N	04-172	27 IR 3595	*CPH (28 IR 234)
	N	05-123	28 IR 3328	
TITLE 28 STATE INFORMATION TECHNOLOGY OVERSIGHT COMMISSION				
28 IAC	N	04-123	28 IR 986	*CPH (28 IR 1498)
TITLE 31 STATE PERSONNEL DEPARTMENT				
31 IAC 1-9-4	A	04-170	27 IR 4049	
31 IAC 2-11-4	A	04-170	27 IR 4049	
TITLE 40 STATE ETHICS COMMISSION				
40 IAC 2-1-5.5	N	04-198	28 IR 987	*AROC (28 IR 3354)
			28 IR 2160	**28 IR 3452**
40 IAC 2-1-6	A	04-198	28 IR 987	*AROC (28 IR 3354)
			28 IR 2160	**28 IR 3452**
40 IAC 2-1-7	A	04-198	28 IR 988	*AROC (28 IR 3354)
			28 IR 2161	**28 IR 3453**
TITLE 42 OFFICE OF THE INSPECTOR GENERAL				
42 IAC	N	05-124	28 IR 3615	
TITLE 45 DEPARTMENT OF STATE REVENUE				
45 IAC 1.3	N	04-125	27 IR 3101	
45 IAC 18	R	04-292	28 IR 1518	
45 IAC 18-3-7	R	04-255	28 IR 624	*AWR (28 IR 971)
45 IAC 18-3-7.1	N	04-255	28 IR 623	*AWR (28 IR 971)
45 IAC 18-3-8	R	04-255	28 IR 624	*AWR (28 IR 971)
45 IAC 18-3-8.1	N	04-255	28 IR 623	*AWR (28 IR 971)
45 IAC 20	N	04-292	28 IR 1500	
TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE				
50 IAC 4.2-4-3	A	05-252	29 IR 836	
50 IAC 13	R	05-253	29 IR 584	
50 IAC 20	N	04-174	27 IR 3603	*AROC (27 IR 3707)
				28 IR 1458
50 IAC 21	N	02-297	27 IR 4050	**28 IR 1452**
50 IAC 21-1-3	N	05-142	28 IR 3622	
50 IAC 21-2-1.5	N	05-142	28 IR 3622	
50 IAC 21-2-2	A	05-142	28 IR 3622	
50 IAC 21-2-2.5	N	05-142	28 IR 3622	
50 IAC 21-2-3	A	05-142	28 IR 3622	
50 IAC 21-3-3	A	05-142	28 IR 3623	
50 IAC 21-4-1	A	05-142	28 IR 3623	
50 IAC 21-4-2	A	05-142	28 IR 3624	
50 IAC 21-4-3	R	05-142	28 IR 3626	
50 IAC 21-5-2	A	05-142	28 IR 3624	
50 IAC 21-6-1	A	05-142	28 IR 3625	
50 IAC 21-7-1	A	05-142	28 IR 3625	
50 IAC 21-8-1	A	05-142	28 IR 3625	
50 IAC 21-9-1	A	05-142	28 IR 3625	
50 IAC 21-10-1	A	05-142	28 IR 3626	
50 IAC 21-11-1	A	05-142	28 IR 3626	
50 IAC 22	N	05-144	29 IR 579	
TITLE 65 STATE LOTTERY COMMISSION				
65 IAC 1-4-5.5	A	04-237		*ER (28 IR 217)
65 IAC 4-2-6	A	05-36		*ER (28 IR 2153)
	A	05-312		*ER (29 IR 828)
65 IAC 4-90	R	04-249		*ER (28 IR 227)
65 IAC 4-99	R	04-249		*ER (28 IR 227)
65 IAC 4-205	R	04-249		*ER (28 IR 227)
65 IAC 4-206	R	05-313		*ER (29 IR 829)
65 IAC 4-248	R	04-249		*ER (28 IR 227)
65 IAC 4-272	R	04-249		*ER (28 IR 227)
65 IAC 4-287	R	04-249		*ER (28 IR 227)
65 IAC 4-317	R	04-249		*ER (28 IR 227)
65 IAC 4-319	R	04-249		*ER (28 IR 227)
65 IAC 4-321	R	04-249		*ER (28 IR 227)
65 IAC 4-330	R	05-313		*ER (29 IR 829)
65 IAC 4-331	R	05-313		*ER (29 IR 829)
65 IAC 4-332	R	04-249		*ER (28 IR 227)
65 IAC 4-339	R	05-313		*ER (29 IR 829)
65 IAC 4-343	R	04-249		*ER (28 IR 227)
65 IAC 4-346	R	05-313		*ER (29 IR 829)
65 IAC 4-348	N	04-241		*ER (28 IR 221)
	R	05-313		*ER (29 IR 829)
65 IAC 4-349	N	04-283		*ER (28 IR 975)
	R	05-313		*ER (29 IR 829)
65 IAC 4-350	N	04-252		*ER (28 IR 229)
65 IAC 4-352	N	04-284		*ER (28 IR 978)
	R	05-313		*ER (29 IR 829)
65 IAC 4-353	N	04-329		*ER (28 IR 1492)
65 IAC 4-354	R	04-249		*ER (28 IR 227)
65 IAC 4-355	N	05-32		*ER (28 IR 2147)
	R	05-313		*ER (29 IR 829)
65 IAC 4-356	N	05-87		*ER (28 IR 2734)
65 IAC 4-359	R	04-249		*ER (28 IR 227)
65 IAC 4-367	R	04-249		*ER (28 IR 227)
65 IAC 4-383	R	04-249		*ER (28 IR 227)
65 IAC 4-390	R	04-249		*ER (28 IR 227)
65 IAC 4-401	R	04-249		*ER (28 IR 227)
65 IAC 4-402	R	04-249		*ER (28 IR 227)
65 IAC 4-403	R	04-249		*ER (28 IR 227)
65 IAC 4-404	R	04-249		*ER (28 IR 227)
65 IAC 4-405	R	04-249		*ER (28 IR 227)
65 IAC 4-406	R	04-249		*ER (28 IR 227)
65 IAC 4-408	R	04-249		*ER (28 IR 227)
65 IAC 4-437	R	04-249		*ER (28 IR 227)
65 IAC 4-438	R	05-313		*ER (29 IR 829)
65 IAC 4-439	R	04-249		*ER (28 IR 227)
65 IAC 4-440	R	04-249		*ER (28 IR 227)
65 IAC 4-441	R	04-249		*ER (28 IR 227)
65 IAC 4-442	R	04-249		*ER (28 IR 227)
65 IAC 4-443	R	04-249		*ER (28 IR 227)
65 IAC 4-444	R	05-313		*ER (29 IR 829)
65 IAC 4-445	R	04-249		*ER (28 IR 227)
65 IAC 4-446	R	04-249		*ER (28 IR 227)
65 IAC 4-447	R	04-249		*ER (28 IR 227)
65 IAC 4-448	R	04-249		*ER (28 IR 227)
65 IAC 4-450	R	04-249		*ER (28 IR 227)
65 IAC 4-451	R	05-313		*ER (29 IR 829)
65 IAC 4-453	R	04-249		*ER (28 IR 227)
65 IAC 4-454	N	05-311		*ER (29 IR 826)
65 IAC 5-2-6	A	05-36		*ER (28 IR 2153)
	A	05-312		*ER (29 IR 828)
65 IAC 5-12-2	A	05-245		*ER (29 IR 41)
65 IAC 5-12-3	A	05-245		*ER (29 IR 42)
65 IAC 5-12-4	A	05-245		*ER (29 IR 42)
65 IAC 5-12-5	A	05-245		*ER (29 IR 43)
65 IAC 5-12-6	A	05-245		*ER (29 IR 43)
65 IAC 5-12-9	A	05-245		*ER (29 IR 44)
65 IAC 5-12-10	A	05-245		*ER (29 IR 45)
65 IAC 5-12-11	A	05-245		*ER (29 IR 45)
65 IAC 5-12-11.5	A	05-245		*ER (29 IR 46)
65 IAC 5-12-12	A	05-245		*ER (29 IR 46)
65 IAC 5-12-12.5	A	05-245		*ER (29 IR 47)
65 IAC 5-13	R	04-249		*ER (28 IR 227)
65 IAC 5-14	R	04-249		*ER (28 IR 227)
65 IAC 5-15	R	04-249		*ER (28 IR 227)
65 IAC 5-16	N	05-28		*ER (28 IR 2142)
65 IAC 5-16-4	A	05-247		*ER (29 IR 49)
65 IAC 5-16-5	A	05-247		*ER (29 IR 49)
65 IAC 5-16-6	A	05-247		*ER (29 IR 49)

65 IAC 5-16-7	A	05-247		*ER (29 IR 49)
65 IAC 5-16-8	A	05-247		*ER (29 IR 49)
65 IAC 5-17	N	05-83		*ER (28 IR 2731)
65 IAC 5-18	N	05-88		*ER (28 IR 2738)
65 IAC 5-18-5	A	05-136		*ER (28 IR 2993)
65 IAC 5-19	N	05-159		*ER (28 IR 3313)
65 IAC 6-2-6	A	05-36		*ER (28 IR 2154)

TITLE 68 INDIANA GAMING COMMISSION

68 IAC 1-5-1	A	04-103	27 IR 3115	**28 IR 532**
68 IAC 2-3-5	A	04-103	27 IR 3115	**28 IR 533**
68 IAC 2-3-6	A	04-103	27 IR 3117	**28 IR 535**
68 IAC 2-3-9	A	04-103	27 IR 3118	**28 IR 535**
68 IAC 2-6-49	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 2-7-12	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 5-3-2	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 5-3-7	A	04-102	27 IR 3109	**28 IR 527**
68 IAC 8-1-11	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 8-2-29	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 9-4-8	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 10-1-5	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 11-1-8	A	04-102	27 IR 3110	**28 IR 528**
68 IAC 11-3-1	A	04-102	27 IR 3110	**28 IR 528**
68 IAC 12-1-15	A	04-102	27 IR 3111	**28 IR 529**
68 IAC 14-4-8	A	04-102	27 IR 3112	**28 IR 529**
68 IAC 14-5-6	A	04-102	27 IR 3112	**28 IR 529**
68 IAC 15-1-8	A	04-102	27 IR 3112	**28 IR 530**
68 IAC 15-3-3	A	04-179	28 IR 237	**28 IR 2014**
68 IAC 15-5-1.5	N	05-107	28 IR 3627	*CPH (29 IR 51)
68 IAC 15-5-2	A	04-179	28 IR 237	**28 IR 2014**
68 IAC 15-6-2	A	04-179	28 IR 238	**28 IR 2015**
68 IAC 15-6-3	A	04-179	28 IR 239	**28 IR 2016**
68 IAC 15-6-5	A	04-179	28 IR 240	**28 IR 2016**
68 IAC 15-9-4	A	04-102	27 IR 3112	**28 IR 530**
68 IAC 15-10-4.1	A	04-102	27 IR 3113	**28 IR 530**
68 IAC 15-13-2.5	N	04-102	27 IR 3113	**28 IR 531**
68 IAC 16-1-16	A	04-102	27 IR 3113	**28 IR 531**
68 IAC 17-1-5	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 17-2-6	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 18-1-2	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 18-1-6	A	04-102	27 IR 3114	**28 IR 532**

TITLE 71 INDIANA HORSE RACING COMMISSION

71 IAC 1-1-1.5	N	05-246		*ER (29 IR 829)
71 IAC 1-1-75.5	N	05-246		*ER (29 IR 829)
71 IAC 1.5-1-1.5	N	05-246		*ER (29 IR 829)
71 IAC 1.5-1-71.5	N	05-246		*ER (29 IR 829)
71 IAC 3-2-9	A	05-115		*ER (28 IR 2745)
71 IAC 3-3-11	A	05-115		*ER (28 IR 2746)
71 IAC 3-4-1	A	05-115		*ER (28 IR 2746)
71 IAC 3-7-3	R	05-115		*ER (28 IR 2751)
71 IAC 3-11-1	A	05-115		*ER (28 IR 2746)
71 IAC 5-3-1	A	05-115		*ER (28 IR 2746)
71 IAC 6-1-3	A	05-115		*ER (28 IR 2747)
71 IAC 6-1-4	N	05-115		*ER (28 IR 2748)
71 IAC 7-1-29	A	05-115		*ER (28 IR 2748)
71 IAC 7-3-7	A	05-115		*ER (28 IR 2749)
71 IAC 7-3-13	A	05-115		*ER (28 IR 2750)
71 IAC 7-3-18	A	05-115		*ER (28 IR 2750)
71 IAC 7-3-29	A	05-115		*ER (28 IR 2751)
71 IAC 7-3-36	N	05-115		*ER (28 IR 2751)
71 IAC 7-5-1	A	05-115		*ER (28 IR 2751)
71 IAC 7-5-2	A	05-115		*ER (28 IR 2751)
71 IAC 7.5-6-3	A	05-27		*ER (28 IR 2154)
71 IAC 8.5-13	N	05-221		*ER (28 IR 3599)
71 IAC 9-1-14	A	05-246		*ER (29 IR 830)
71 IAC 13.5-3-3	A	05-115		*ER (28 IR 2751)

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

105 IAC 13	N	05-161	29 IR 59	*CPH (29 IR 832)
105 IAC 14	N	05-258	29 IR 588	

TITLE 135 INDIANA FINANCE AUTHORITY

135 IAC 2-1-1	A	05-257	29 IR 598
135 IAC 2-2-1	A	05-257	29 IR 600
135 IAC 2-2-3	A	05-257	29 IR 601
135 IAC 2-2-5	A	05-257	29 IR 601
135 IAC 2-2-10	A	05-257	29 IR 601
135 IAC 2-2-12	A	05-257	29 IR 601
135 IAC 2-3-1	A	05-257	29 IR 602
135 IAC 2-3-2	A	05-257	29 IR 602
135 IAC 2-4-1	A	05-257	29 IR 602
135 IAC 2-4-2	A	05-257	29 IR 602
135 IAC 2-4-4	A	05-257	29 IR 603
135 IAC 2-5-1	A	05-257	29 IR 603
135 IAC 2-5-2	R	05-257	29 IR 614
135 IAC 2-5-2.1	N	05-257	29 IR 603
135 IAC 2-5-3	A	05-257	29 IR 607
135 IAC 2-5-5	A	05-257	29 IR 607
135 IAC 2-7-1	A	05-257	29 IR 608
135 IAC 2-7-2	A	05-257	29 IR 608
135 IAC 2-7-3	A	05-257	29 IR 608
135 IAC 2-7-5	A	05-257	29 IR 608
135 IAC 2-7-6	A	05-257	29 IR 609
135 IAC 2-7-7	A	05-257	29 IR 609
135 IAC 2-7-8	A	05-257	29 IR 609
135 IAC 2-7-11	A	05-257	29 IR 609
135 IAC 2-7-12	A	05-257	29 IR 609
135 IAC 2-7-13	A	05-257	29 IR 610
135 IAC 2-7-14	A	05-257	29 IR 610
135 IAC 2-7-15	A	05-257	29 IR 610
135 IAC 2-7-16	A	05-257	29 IR 610
135 IAC 2-7-17	A	05-257	29 IR 610
135 IAC 2-7-18	A	05-257	29 IR 610
135 IAC 2-7-19	A	05-257	29 IR 611
135 IAC 2-7-20	A	05-257	29 IR 611
135 IAC 2-7-21	A	05-257	29 IR 611
135 IAC 2-7-22	A	05-257	29 IR 612
135 IAC 2-7-23	A	05-257	29 IR 612
135 IAC 2-7-24	A	05-257	29 IR 612
135 IAC 2-8-1	A	05-257	29 IR 612
135 IAC 2-8-3	A	05-257	29 IR 612
135 IAC 2-8-5	A	05-257	29 IR 613
135 IAC 2-8-7	A	05-257	29 IR 613
135 IAC 2-8-11	A	05-257	29 IR 613
135 IAC 2-10-1	R	05-257	29 IR 614
135 IAC 2-10-2	A	05-257	29 IR 613

TITLE 140 BUREAU OF MOTOR VEHICLES

140 IAC 4-4	RA	04-162	28 IR 323	**28 IR 1315**
140 IAC 7-4	N	05-237	29 IR 64	
140 IAC 8-4	RA	04-162	28 IR 323	**28 IR 1315**

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

170 IAC 1-4	RA	04-163	27 IR 4140	*CPH (28 IR 620) **28 IR 1315**
170 IAC 1-5	RA	04-163	27 IR 4140	*CPH (28 IR 620) **28 IR 1315**
170 IAC 4-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-23	A	04-68	27 IR 2765	**28 IR 789**
170 IAC 4-1.2	N	04-144	27 IR 4057	*CPH (28 IR 620) *AWR (28 IR 2730)

170 IAC 4-4.1-7	A	05-130	28 IR 3331	
170 IAC 4-4.2	N	03-305	27 IR 2312	**28 IR 786**
170 IAC 4-4.2-5	A	05-130	28 IR 3332	
170 IAC 4-4.3	N	05-130	28 IR 3333	
170 IAC 5-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620)
				*AWR (28 IR 2730)
	A	05-100	28 IR 3627	
170 IAC 5-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)
				*AWR (28 IR 2730)
	A	05-100	28 IR 3630	
170 IAC 5-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 5-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 5-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 5-1.2	N	04-144	27 IR 4065	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 6-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 6-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 6-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 6-1.1	N	04-268	28 IR 1518	*CPH (28 IR 1710)
				29 IR 456
170 IAC 6-1.2	N	04-144	27 IR 4073	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 7-1.3-2	A	04-144	27 IR 4080	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 7-1.3-3	A	04-144	27 IR 4081	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 7-1.3-8	A	04-144	27 IR 4083	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 7-1.3-9	A	04-144	27 IR 4084	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 7-1.3-10	A	04-144	27 IR 4085	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 7-6	RA	05-22	28 IR 2458	**29 IR 144**
170 IAC 8.5-2-1	A	04-144	27 IR 4086	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 8.5-2-3	A	04-144	27 IR 4087	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 8.5-2-4	A	04-144	27 IR 4089	*CPH (28 IR 620)
				*AWR (28 IR 2730)
170 IAC 8.5-2-5	A	04-144	27 IR 4092	*CPH (28 IR 620)
				*AWR (28 IR 2730)

TITLE 203 VICTIM SERVICES DIVISION

203 IAC	N	04-63	27 IR 2526	**28 IR 6**

TITLE 207 CORONERS TRAINING BOARD

207 IAC 2	N	04-231	28 IR 624	*ARR (28 IR 2392)

TITLE 240 STATE POLICE DEPARTMENT

240 IAC 1-4-3	A	05-287	29 IR 838	
240 IAC 1-4-24.1	A	05-287	29 IR 838	
240 IAC 1-5-5	A	05-287	29 IR 839	
240 IAC 8	RA	04-164	27 IR 4140	**28 IR 677**

TITLE 260 STATE DEPARTMENT OF TOXICOLOGY

260 IAC 1.1-1-1	RA	05-152		**29 IR 896**
260 IAC 1.1-2-2	RA	05-152		**29 IR 896**

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

305 IAC 1-2	RA	05-60	28 IR 3052	**29 IR 690**
305 IAC 1-2-6	A	03-212	27 IR 216	*ARR (28 IR 215)
				28 IR 12
305 IAC 1-3-4	A	03-212	27 IR 216	*ARR (28 IR 215)
				28 IR 12
305 IAC 1-4-1	A	03-212	27 IR 217	*ARR (28 IR 215)
				28 IR 12
305 IAC 1-4-2	A	03-212	27 IR 217	*ARR (28 IR 215)
				28 IR 13
305 IAC 1-5	N	03-212	27 IR 217	*ARR (28 IR 215)
				28 IR 13

TITLE 312 NATURAL RESOURCES COMMISSION

312 IAC 2-4-6	A	04-215	28 IR 626	**28 IR 2348**
312 IAC 2-4-12	A	04-67	27 IR 3604	**28 IR 1460**
312 IAC 2-4-14	N	04-215	28 IR 626	**28 IR 2348**
312 IAC 3-1-7	A	04-263	28 IR 1203	**28 IR 2660**
312 IAC 3-1-9	A	05-57	28 IR 3003	
312 IAC 4-6-6	A	04-208	28 IR 625	*ARR (28 IR 2140)
312 IAC 5-6-5	A	04-84	28 IR 240	**28 IR 1680**
312 IAC 5-6-5.5	N	04-210	28 IR 989	**28 IR 2944**
312 IAC 5-7-5	A	05-263	29 IR 839	
312 IAC 5-14-1	A	04-155	27 IR 4100	**28 IR 1461**
312 IAC 5-14-2	A	04-155	27 IR 4100	**28 IR 1461**
312 IAC 5-14-4	A	04-155	27 IR 4101	**28 IR 1462**
312 IAC 5-14-5	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-5.1	N	04-155	27 IR 4101	**28 IR 1462**
312 IAC 5-14-6	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-6.1	N	04-155	27 IR 4102	**28 IR 1463**
312 IAC 5-14-7	A	04-155	27 IR 4102	**28 IR 1463**
312 IAC 5-14-8	A	04-155	27 IR 4102	**28 IR 1464**
312 IAC 5-14-9	A	04-155	27 IR 4103	**28 IR 1464**
312 IAC 5-14-11	A	04-155	27 IR 4103	**28 IR 1464**
312 IAC 5-14-15	A	04-155	27 IR 4103	**28 IR 1465**
312 IAC 5-14-16	A	04-155	27 IR 4104	**28 IR 1465**
312 IAC 5-14-17	A	04-155	27 IR 4104	**28 IR 1465**
312 IAC 5-14-18	A	04-155	27 IR 4105	**28 IR 1466**
312 IAC 5-14-19	A	04-155	27 IR 4105	**28 IR 1467**
312 IAC 5-14-20	A	04-155	27 IR 4106	**28 IR 1467**
312 IAC 5-14-21	A	04-155	27 IR 4106	**28 IR 1467**
312 IAC 5-14-22	A	04-155	27 IR 4106	**28 IR 1468**
312 IAC 5-14-24	A	04-155	27 IR 4107	**28 IR 1468**
312 IAC 5-14-25	A	04-155	27 IR 4108	**28 IR 1469**
312 IAC 5-14-26	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-27	N	04-155	27 IR 4109	**28 IR 1470**
312 IAC 6.2	N	04-66	27 IR 3119	**28 IR 1459**
312 IAC 6.5	N	04-3	27 IR 2767	**28 IR 15**
312 IAC 8	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 8-1-4	A	05-18	28 IR 2412	**29 IR 461**
312 IAC 8-2-3	A	05-18	28 IR 2413	**29 IR 461**
312 IAC 8-2-8	A	05-18	28 IR 2414	**29 IR 463**
312 IAC 9-1-9.5	N	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-1-11.5	N	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-2-1	A	05-214	29 IR 618	
312 IAC 9-2-14	N	04-253	28 IR 1522	
	N	05-214	29 IR 618	
312 IAC 9-2-15	N	04-253	28 IR 1522	
312 IAC 9-3-2	A	03-311	27 IR 1946	**28 IR 536**
	A	05-214	29 IR 619	
312 IAC 9-3-3	A	03-311	27 IR 1947	**28 IR 538**
	A	05-214	29 IR 620	
312 IAC 9-3-4	A	03-311	27 IR 1948	**28 IR 538**
	A	04-253	28 IR 1523	**28 IR 2945**
312 IAC 9-3-5	A	04-253	28 IR 1523	**28 IR 2945**
312 IAC 9-3-10	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-11	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-12	A	03-311	27 IR 1949	**28 IR 539**
	A	05-214	29 IR 621	
312 IAC 9-3-13	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-14	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-15	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-17	A	03-311	27 IR 1950	**28 IR 540**

312 IAC 9-3-18.1	N	05-214	29 IR 621	
312 IAC 9-3-18.2	N	05-214	29 IR 621	
312 IAC 9-3-18.3	N	05-214	29 IR 621	
312 IAC 9-3-18.4	N	05-214	29 IR 621	
312 IAC 9-3-19	A	05-214	29 IR 622	
312 IAC 9-4-2	A	05-214	29 IR 622	
312 IAC 9-4-5.5	N	05-214	29 IR 622	
312 IAC 9-4-7	R	03-311	27 IR 1966	**28 IR 556**
312 IAC 9-4-10	A	03-311	27 IR 1951	
312 IAC 9-4-11	A	03-311	27 IR 1951	**28 IR 541**
	A	04-253	28 IR 1524	**28 IR 2946**
	A	05-214	29 IR 623	
312 IAC 9-4-14	A	03-311	27 IR 1952	**28 IR 542**
312 IAC 9-5-4	A	03-311	27 IR 1953	**28 IR 542**
	A	04-253	28 IR 1526	**28 IR 2947**
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**
	A	05-214	29 IR 624	
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 9-10-5	A	05-214	29 IR 626	
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 9-10-11	A	05-214	29 IR 626	
312 IAC 9-10-12	A	05-214	29 IR 628	
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 9-11-13	A	05-214	29 IR 628	
312 IAC 9-11-14	A	03-311	27 IR 1965	**28 IR 555**
312 IAC 11	RA	05-1	28 IR 2203	**28 IR 3661**
312 IAC 11-2-2	A	05-38	28 IR 2767	**29 IR 464**
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	**29 IR 464**
312 IAC 11-2-11	A	05-38	28 IR 2768	**29 IR 464**
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	**29 IR 464**
312 IAC 11-2-14.5	N	05-38	28 IR 2768	**29 IR 464**
312 IAC 11-2-20	A	05-38	28 IR 2768	**29 IR 465**
312 IAC 11-2-24	A	05-38	28 IR 2768	**29 IR 465**
312 IAC 11-2-25.2	N	05-38	28 IR 2768	**29 IR 465**
312 IAC 11-2-27.5	N	05-38	28 IR 2769	**29 IR 465**
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	**29 IR 465**
312 IAC 11-4-2	A	05-38	28 IR 2770	**29 IR 466**
312 IAC 11-4-3	A	05-38	28 IR 2770	**29 IR 467**
312 IAC 11-4-4	A	05-38	28 IR 2771	**29 IR 467**
312 IAC 11-5-3	N	05-38	28 IR 2771	**29 IR 468**
312 IAC 12	RA	05-1	28 IR 2203	**28 IR 3661**
312 IAC 13	RA	05-1	28 IR 2203	**28 IR 3661**
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	**29 IR 458**
312 IAC 17	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 17-3	R	05-99	28 IR 3632	
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
	A	05-213	29 IR 614	
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	**28 IR 3661**
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	**29 IR 469**
315 IAC 1-3-1	A	04-70	28 IR 991	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2773	**29 IR 469**
315 IAC 1-3-2	A	04-70	28 IR 991	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2774	**29 IR 470**
315 IAC 1-3-2.1	N	04-70	28 IR 992	*CPH (28 IR 1498)
				*SPE
	N	05-73	28 IR 2775	**29 IR 471**
315 IAC 1-3-3	A	04-70	28 IR 992	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2775	**29 IR 471**
315 IAC 1-3-4	A	04-70	28 IR 993	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2776	**29 IR 472**
315 IAC 1-3-5	A	04-70	28 IR 994	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2776	**29 IR 473**
315 IAC 1-3-7	A	04-70	28 IR 994	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2777	**29 IR 473**
315 IAC 1-3-8	A	04-70	28 IR 994	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2777	**29 IR 474**
315 IAC 1-3-9	A	04-70	28 IR 995	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2778	**29 IR 474**
315 IAC 1-3-10	A	04-70	28 IR 995	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2778	**29 IR 475**
315 IAC 1-3-12	A	04-70	28 IR 996	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2778	**29 IR 475**
315 IAC 1-3-14	A	04-70	28 IR 996	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2779	**29 IR 475**
315 IAC 1-3-15	N	04-70	28 IR 996	*CPH (28 IR 1498)
				*SPE
	N	05-73	28 IR 2779	**29 IR 476**

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)
				29 IR 795
	A	05-230	29 IR 632	

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)
				29 IR 795
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	**29 IR 795**
326 IAC 1-2-48	A	05-79	28 IR 3005	**29 IR 796**
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	**29 IR 796**
326 IAC 1-3-4	A	03-228	27 IR 3121	**28 IR 1471**
	A	05-235	29 IR 633	
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	**28 IR 3550**
326 IAC 6-1-1.5	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-2	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-3	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-4	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-5	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-6	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-7	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-8.1	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-9	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-10.1	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-10.2	R	02-335	28 IR 1813	**28 IR 3550**

326 IAC 6-1-11.1	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-11.2	R	02-335	28 IR 1813	**28 IR 3550**
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	**28 IR 3550**
326 IAC 6-1-13	A	03-195	27 IR 2318	**28 IR 115**
	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-14	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-15	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-16	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-17	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-1-18	R	02-335	28 IR 1813	**28 IR 3550**
326 IAC 6-2-1				*ERR (29 IR 819)
326 IAC 6-3-1				*ERR (29 IR 819)
326 IAC 6-5-4				*ERR (29 IR 819)
326 IAC 6-6-1				*ERR (29 IR 819)
326 IAC 6.5	N	02-335	28 IR 1714	**28 IR 3454**
				*ERR (29 IR 548)
326 IAC 6.5-7-13	A	04-234	28 IR 1814	*CPH (28 IR 2406)
				29 IR 476
326 IAC 6.8	N	02-335	28 IR 1766	**28 IR 3503**
326 IAC 6.8-2-4	A	04-278	28 IR 3004	**29 IR 794**
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	**29 IR 797**
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 20-29	N	05-236	29 IR 635	
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	**28 IR 3550**
326 IAC 20-91	N	04-300	28 IR 1816	**28 IR 3550**
326 IAC 20-92	N	04-300	28 IR 1817	**28 IR 3550**
326 IAC 20-93	N	04-300	28 IR 1817	**28 IR 3551**
326 IAC 20-94	N	04-300	28 IR 1817	**28 IR 3551**
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

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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
				*ERR (28 IR 3582)
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
				*ERR (28 IR 3582)
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	**28 IR 3551**
327 IAC 3-2-3.5	N	04-320	28 IR 2192	**28 IR 3552**
327 IAC 3-2-5.5	N	04-320	28 IR 2193	**28 IR 3552**
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
				*ERR (28 IR 3582)
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
				*ERR (28 IR 3582)

327 IAC 8-1-1	A	04-106	28 IR 2163	*ARR (29 IR 31)
327 IAC 8-1-2	A	04-106	28 IR 2164	*ARR (29 IR 31)
327 IAC 8-1-3	A	04-106	28 IR 2164	*ARR (29 IR 31)
327 IAC 8-1-4	A	04-106	28 IR 2165	*ARR (29 IR 31)
327 IAC 8-2-1	A	04-13	28 IR 1206	**28 IR 3184**
327 IAC 8-2-4	A	04-13	28 IR 1210	**28 IR 3188**
327 IAC 8-2-4.1	A	04-13	28 IR 1212	**28 IR 3190**
327 IAC 8-2-4.2	A	04-13	28 IR 1217	**28 IR 3196**
				*ERR (28 IR 3582)
				*ERR (29 IR 30)
327 IAC 8-2-5.1	A	04-13	28 IR 1220	**28 IR 3198**
327 IAC 8-2-5.2	A	04-13	28 IR 1222	**28 IR 3200**
				*ERR (28 IR 3582)
327 IAC 8-2-5.5	A	04-13	28 IR 1225	**28 IR 3203**
				*ERR (28 IR 3582)
327 IAC 8-2-8.5	A	04-13	28 IR 1228	**28 IR 3206**
327 IAC 8-2-8.7	A	04-13	28 IR 1229	**28 IR 3207**
				*ERR (28 IR 3582)
327 IAC 8-2-9	A	04-13	28 IR 1230	**28 IR 3209**
327 IAC 8-2-10.1	A	04-13	28 IR 1230	**28 IR 3209**
				*ERR (28 IR 3582)
327 IAC 8-2-10.2	A	04-13	28 IR 1233	**28 IR 3212**
				*ERR (28 IR 3582)
327 IAC 8-2-10.3	N	04-13	28 IR 1237	**28 IR 3215**
327 IAC 8-2-13	A	04-13	28 IR 1239	**28 IR 3217**
327 IAC 8-2-34	A	04-13	28 IR 1239	**28 IR 3218**
327 IAC 8-2-34.1	N	04-13	28 IR 1240	**28 IR 3218**
327 IAC 8-2-45	A	04-13	28 IR 1240	**28 IR 3218**
				*ERR (28 IR 3583)
327 IAC 8-2-46	A	04-13	28 IR 1242	**28 IR 3220**
327 IAC 8-2.1-3	A	04-13	28 IR 1244	**28 IR 3223**
				*ERR (28 IR 3583)
327 IAC 8-2.1-4	A	04-13	28 IR 1247	**28 IR 3226**
327 IAC 8-2.1-6	A	04-13	28 IR 1248	**28 IR 3227**
327 IAC 8-2.1-8	A	04-13	28 IR 1255	**28 IR 3233**
327 IAC 8-2.1-9	A	04-13	28 IR 1256	**28 IR 3234**
327 IAC 8-2.1-14	A	04-13	28 IR 1257	**28 IR 3235**
327 IAC 8-2.1-16	A	04-13	28 IR 1257	**28 IR 3236**
				*ERR (28 IR 3583)
327 IAC 8-2.1-17	A	04-13	28 IR 1261	**28 IR 3240**
327 IAC 8-2.6-1	A	04-13	28 IR 1268	**28 IR 3247**
				*ERR (29 IR 30)
327 IAC 8-2.6-2	A	04-13	28 IR 1269	**28 IR 3248**
				*ERR (28 IR 3583)
327 IAC 8-2.6-2.1	N	04-13	28 IR 1271	**28 IR 3250**
				*ERR (28 IR 3583)
327 IAC 8-2.6-3	A	04-13	28 IR 1273	**28 IR 3252**
327 IAC 8-2.6-4	A	04-13	28 IR 1274	**28 IR 3253**
327 IAC 8-2.6-5	A	04-13	28 IR 1274	**28 IR 3253**
327 IAC 8-3-1	A	04-106	28 IR 2165	*ARR (29 IR 31)
327 IAC 8-3-1.1	A	04-106	28 IR 2166	*ARR (29 IR 31)
327 IAC 8-3-2	A	04-106	28 IR 2166	*ARR (29 IR 31)
327 IAC 8-3-2.1	N	04-106	28 IR 2167	*ARR (29 IR 31)
327 IAC 8-3-3	A	04-106	28 IR 2168	*ARR (29 IR 31)
327 IAC 8-3-8	A	04-106	28 IR 2168	*ARR (29 IR 31)
327 IAC 8-3.1-1	A	04-106	28 IR 2169	*ARR (29 IR 31)
327 IAC 8-3.1-2	A	04-106	28 IR 2169	*ARR (29 IR 31)
327 IAC 8-3.2-1	A	04-106	28 IR 2170	*ARR (29 IR 31)
327 IAC 8-3.2-2	A	04-106	28 IR 2170	*ARR (29 IR 31)
327 IAC 8-3.2-4	A	04-106	28 IR 2171	*ARR (29 IR 31)
327 IAC 8-3.2-8	A	04-106	28 IR 2171	*ARR (29 IR 31)
327 IAC 8-3.2-11	A	04-106	28 IR 2173	*ARR (29 IR 31)
327 IAC 8-3.2-17	A	04-106	28 IR 2173	*ARR (29 IR 31)
327 IAC 8-3.2-18	A	04-106	28 IR 2174	*ARR (29 IR 31)
327 IAC 8-3.2-20	A	04-106	28 IR 2175	*ARR (29 IR 31)
327 IAC 8-3.3-4	A	04-106	28 IR 2175	*ARR (29 IR 31)
327 IAC 8-3.3-5	A	04-106	28 IR 2176	*ARR (29 IR 31)
327 IAC 8-3.3-6	A	04-106	28 IR 2176	*ARR (29 IR 31)
327 IAC 8-3.4-1	A	04-106	28 IR 2176	*ARR (29 IR 31)
327 IAC 8-3.4-2	A	04-106	28 IR 2178	*ARR (29 IR 31)
327 IAC 8-3.4-3	A	04-106	28 IR 2178	*ARR (29 IR 31)
327 IAC 8-3.4-4	A	04-106	28 IR 2179	*ARR (29 IR 31)
327 IAC 8-3.4-8	A	04-106	28 IR 2180	*ARR (29 IR 31)
327 IAC 8-3.4-9	A	04-106	28 IR 2180	*ARR (29 IR 31)
327 IAC 8-3.4-9.1	N	04-106	28 IR 2182	*ARR (29 IR 31)
327 IAC 8-3.4-12	A	04-106	28 IR 2183	*ARR (29 IR 31)
327 IAC 8-3.4-13	A	04-106	28 IR 2183	*ARR (29 IR 31)
327 IAC 8-3.4-14	A	04-106	28 IR 2183	*ARR (29 IR 31)
327 IAC 8-3.4-16	A	04-106	28 IR 2184	*ARR (29 IR 31)
327 IAC 8-3.4-17	A	04-106	28 IR 2185	*ARR (29 IR 31)
327 IAC 8-3.4-23	A	04-106	28 IR 2185	*ARR (29 IR 31)
327 IAC 8-3.4-24	A	04-106	28 IR 2186	*ARR (29 IR 31)
327 IAC 8-3.4-25	A	04-106	28 IR 2187	*ARR (29 IR 31)
327 IAC 8-3.4-27	A	04-106	28 IR 2188	*ARR (29 IR 31)
327 IAC 8-3.5-1	A	04-106	28 IR 2188	*ARR (29 IR 31)
327 IAC 8-3.5-2	A	04-106	28 IR 2189	*ARR (29 IR 31)
327 IAC 8-3.5-5	A	04-106	28 IR 2189	*ARR (29 IR 31)
327 IAC 8-4-1	A	04-106	28 IR 2190	*ARR (29 IR 31)
327 IAC 8-4-2	N	04-106	28 IR 2191	*ARR (29 IR 31)
327 IAC 8-6-1	A	04-106	28 IR 2191	*ARR (29 IR 31)
327 IAC 15-14				*ERR (28 IR 214)
327 IAC 17	N	04-228	28 IR 1288	**28 IR 2968**
				*ERR (29 IR 548)

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	**28 IR 3553**
329 IAC 3.1-6-7	N	05-85	29 IR 843	
329 IAC 3.1-7.5	N	03-312	27 IR 4112	**28 IR 2663**
329 IAC 3.1-12-2	A	03-312	27 IR 4113	**28 IR 2665**
329 IAC 3.1-13-2	A	03-312	27 IR 4114	**28 IR 2665**
329 IAC 9-1-1	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3177	**28 IR 145**
329 IAC 9-1-4	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3177	**28 IR 145**
329 IAC 9-1-10.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-10.2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-10.4	N	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3177	**28 IR 146**
329 IAC 9-1-10.6	N	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-10.8	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-14.3	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14.5	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**

329 IAC 9-1-14.7	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-25	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-27	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 147**
329 IAC 9-1-29.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-36	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (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)
				*ERR (28 IR 1485)
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)
				28 IR 2128
329 IAC 13-3-1	A	03-312	27 IR 4115	**28 IR 2666**
329 IAC 13-3-4	N	03-312	27 IR 4116	**28 IR 2668**
329 IAC 13-9-5	A	03-312	27 IR 4117	**28 IR 2669**
329 IAC 15-1-1				*ER (28 IR 214)

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345 IAC 1-2.5	N	04-248	28 IR 1818	**28 IR 3554**
345 IAC 1-3-6.5	R	04-147	27 IR 4136	**28 IR 2687**
345 IAC 1-3-7	A	04-147	27 IR 4120	**28 IR 2671**
345 IAC 1-3-9	R	04-147	27 IR 4136	**28 IR 2687**
345 IAC 1-3-10	A	04-147	27 IR 4121	**28 IR 2672**
345 IAC 1-3-17	A	05-216	29 IR 852	
345 IAC 1-3-19	A	05-216	29 IR 852	
345 IAC 1-3-20	R	05-41	28 IR 3648	
345 IAC 1-3-31	A	04-287	28 IR 1833	**28 IR 3569**
345 IAC 1-5-3	A	05-90	28 IR 3652	
345 IAC 1-7	N	05-121	29 IR 847	
345 IAC 2-4.1	R	04-147	27 IR 4136	**28 IR 2687**
345 IAC 2.5	N	04-147	27 IR 4121	**28 IR 2672**
345 IAC 2.5-3-2	A	05-177	29 IR 849	
345 IAC 4-4-1	A	04-135	27 IR 4118	**28 IR 1473**
345 IAC 5-1-1	R	05-41	28 IR 3648	
345 IAC 5-1-2	R	05-41	28 IR 3648	
345 IAC 5-2	N	05-41	28 IR 3633	
345 IAC 5-3	N	05-41	28 IR 3641	
345 IAC 5-4	N	05-41	28 IR 3642	
345 IAC 5-5	N	05-41	28 IR 3644	
345 IAC 5-6	N	05-41	28 IR 3645	
345 IAC 5-7	N	05-41	28 IR 3646	
345 IAC 6-2	N	04-158	28 IR 1000	**28 IR 2353**
345 IAC 7-4.5	N	04-248	28 IR 1820	**28 IR 3556**
345 IAC 7-5-12	A	04-147	27 IR 4135	**28 IR 2687**
345 IAC 7-5-15.1	A	04-16	27 IR 2797	**28 IR 559**
345 IAC 7-5-17	R	05-216	29 IR 853	
345 IAC 7-5-18	R	05-216	29 IR 853	
345 IAC 7-5-22	A	04-16	27 IR 2798	**28 IR 559**
345 IAC 8-2-1.1	A	04-286	28 IR 1821	**28 IR 3557**
345 IAC 8-2-1.5	A	04-286	28 IR 1823	**28 IR 3560**
345 IAC 8-2-1.6	N	04-286	28 IR 1824	**28 IR 3560**
345 IAC 8-2-1.7	A	04-286	28 IR 1824	**28 IR 3560**
345 IAC 8-2-1.9	A	04-286	28 IR 1825	**28 IR 3561**
345 IAC 8-2-4	A	04-286	28 IR 1826	**28 IR 3562**
345 IAC 8-3-1	A	04-286	28 IR 1828	**28 IR 3564**
345 IAC 8-3-2	A	04-286	28 IR 1829	**28 IR 3565**
345 IAC 8-3-12	N	04-286	28 IR 1829	**28 IR 3565**
345 IAC 8-4-1	A	04-286	28 IR 1830	**28 IR 3566**
345 IAC 9-2.1-1	A	05-70	28 IR 3648	
345 IAC 9-12-2	A	05-70	28 IR 3649	
345 IAC 9-20-2	A	05-70	28 IR 3650	
345 IAC 9-21.5	N	05-70	28 IR 3650	
345 IAC 10-2-5	N	04-135	27 IR 4119	**28 IR 1473**
345 IAC 10-2.1-1	A	04-135	27 IR 4119	**28 IR 1474**
	A	05-70	28 IR 3650	

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355 IAC 2-1-1	A	04-312	28 IR 1838	**28 IR 3570**
355 IAC 2-1-6	A	04-312	28 IR 1838	**28 IR 3571**
355 IAC 2-2-1	A	04-312	28 IR 1839	**28 IR 3571**
355 IAC 2-2-1.5	N	04-312	28 IR 1839	**28 IR 3571**
355 IAC 2-2-6	A	04-312	28 IR 1839	**28 IR 3571**
355 IAC 2-2-9	A	04-312	28 IR 1839	**28 IR 3571**
355 IAC 2-2-10	A	04-312	28 IR 1839	**28 IR 3571**
355 IAC 2-2-13	A	04-312	28 IR 1840	**28 IR 3572**
355 IAC 2-2-14	A	04-312	28 IR 1840	**28 IR 3572**
355 IAC 2-2-15	A	04-312	28 IR 1840	**28 IR 3572**
355 IAC 2-2-17	A	04-312	28 IR 1840	**28 IR 3572**
355 IAC 2-3-4	A	04-312	28 IR 1840	**28 IR 3572**
355 IAC 2-3-6	A	04-312	28 IR 1841	**28 IR 3573**
355 IAC 2-3-8	A	04-312	28 IR 1841	**28 IR 3573**
355 IAC 2-3-11	A	04-312	28 IR 1841	**28 IR 3573**
355 IAC 2-3-12	A	04-312	28 IR 1841	**28 IR 3573**
355 IAC 2-4-1	A	04-312	28 IR 1842	**28 IR 3574**
355 IAC 2-5-1	A	04-312	28 IR 1842	**28 IR 3575**
355 IAC 2-5-2	A	04-312	28 IR 1843	**28 IR 3575**
355 IAC 2-5-3	A	04-312	28 IR 1844	**28 IR 3576**
355 IAC 2-5-4	A	04-312	28 IR 1844	**28 IR 3576**
355 IAC 2-5-6	A	04-312	28 IR 1844	**28 IR 3576**
355 IAC 2-5-8	A	04-312	28 IR 1844	**28 IR 3576**
355 IAC 2-5-12	A	04-312	28 IR 1845	**28 IR 3577**
355 IAC 2-5-12.5	A	04-312	28 IR 1845	**28 IR 3577**
355 IAC 2-5-13	A	04-312	28 IR 1846	**28 IR 3578**
355 IAC 2-5-14	R	04-312	28 IR 1846	**28 IR 3578**
355 IAC 2-6-1.5	A	04-312	28 IR 1846	**28 IR 3578**
355 IAC 2-6-2	R	04-312	28 IR 1846	**28 IR 3578**
355 IAC 2-8	R	04-312	28 IR 1846	**28 IR 3578**
355 IAC 2-9-1	A	04-312	28 IR 1846	**28 IR 3578**
355 IAC 4-2-2	A	04-309	28 IR 1834	**29 IR 6**
355 IAC 4-2-8	A	04-309	28 IR 1834	**29 IR 6**
355 IAC 4-5-1	A	04-310	28 IR 1835	**29 IR 7**
355 IAC 4-5-2	A	04-310	28 IR 1836	**29 IR 7**
355 IAC 4-5-3	A	04-310	28 IR 1836	**29 IR 8**
355 IAC 4-5-4	R	04-310	28 IR 1836	**29 IR 8**
355 IAC 4-5-5	R	04-310	28 IR 1836	**29 IR 8**
355 IAC 4-5-6	R	04-310	28 IR 1836	**29 IR 8**
355 IAC 4-5-11	R	04-310	28 IR 1836	**29 IR 8**
355 IAC 4-6-1	A	04-311	28 IR 1837	**29 IR 8**
355 IAC 4-6-2	R	04-311	28 IR 1837	**29 IR 9**
355 IAC 4-6-3	A	04-311	28 IR 1837	**29 IR 8**
355 IAC 4-6-4	R	04-311	28 IR 1838	**29 IR 9**
355 IAC 4-6-6	R	04-311	28 IR 1838	**29 IR 9**
355 IAC 4-6-10	R	04-311	28 IR 1838	**29 IR 9**

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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**
357 IAC 1-12	N	05-215	29 IR 853	

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

405 IAC 1-1-3.1	N	04-321	28 IR 2196	*NRA (28 IR 3321) **28 IR 3579**
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 1-11.5-2	A	05-200	29 IR 637	
405 IAC 1-12-27	N	05-113	28 IR 3654	*AWR (29 IR 821)
405 IAC 1-14.5-27	N	05-114	28 IR 3655	
405 IAC 1-14.6-23	N	05-114	28 IR 3655	
405 IAC 2-2-3	A	04-319	28 IR 1847	*NRA (28 IR 2752) **29 IR 9**
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	*NRA (28 IR 3321) **28 IR 3579**
405 IAC 2-9-5	A	04-319	28 IR 1848	*NRA (28 IR 2752) **29 IR 10**
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**
	A	05-220	29 IR 639	
405 IAC 5-5-1	A	05-220	29 IR 640	
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 5-22-8	A	05-200	29 IR 638	
405 IAC 5-24-4	A	05-76	28 IR 3653	*NRA (29 IR 575)
405 IAC 5-24-5	A	05-76	28 IR 3653	*NRA (29 IR 575)
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**
405 IAC 6-10	N	05-209	29 IR 854	
405 IAC 8	N	05-209	29 IR 856	

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

407 IAC 2-2-3	A	05-155	28 IR 3656	
407 IAC 2-3-1	A	05-156	28 IR 3657	

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

410 IAC 1-2.4	N	04-100	28 IR 2806	*AROC (28 IR 1561) **29 IR 798**
410 IAC 1-6	RA	05-20	28 IR 2458	**28 IR 3661**
410 IAC 3.6	N	05-19	29 IR 870	*AROC (29 IR 898)
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	**28 IR 3661**
410 IAC 15-2.2	RA	05-20	28 IR 2458	**28 IR 3661**
410 IAC 15-2.3	RA	05-20	28 IR 2458	**28 IR 3661**
410 IAC 15-2.4	RA	05-20	28 IR 2458	**28 IR 3661**
410 IAC 15-2.5	RA	05-20	28 IR 2458	**28 IR 3661**
410 IAC 15-2.6	RA	05-20	28 IR 2458	**28 IR 3661**
410 IAC 15-2.6-1				*ERR (28 IR 1695)
410 IAC 15-2.7	RA	05-20	28 IR 2458	**28 IR 3661**
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**
410 IAC 26	N	05-94	29 IR 85	
410 IAC 27	N	05-93	29 IR 66	

TITLE 412 INDIANA HEALTH FACILITIES COUNCIL

412 IAC 2-1-2.1	A	05-35	28 IR 3341	**29 IR 799**
412 IAC 2-1-10	A	05-35	28 IR 3341	**29 IR 800**
412 IAC 2-1-13	R	05-35	28 IR 3342	**29 IR 801**
412 IAC 2-1-14	A	05-35	28 IR 3342	**29 IR 800**

TITLE 414 HOSPITAL COUNCIL

414 IAC 1-1-3	N	05-95	29 IR 103	
414 IAC 1-1-4	N	05-95	29 IR 103	

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**
470 IAC 3.1-1-10	A	05-201	29 IR 104	
470 IAC 3.1-1-18	A	05-201	29 IR 104	
470 IAC 3.1-1-25	A	05-201	29 IR 104	
470 IAC 3.1-1-26	A	05-201	29 IR 104	
470 IAC 3.1-3-1	A	05-201	29 IR 105	
470 IAC 3.1-4-2	A	05-201	29 IR 106	
470 IAC 3.1-7-1	A	05-201	29 IR 106	
470 IAC 3.1-7-2	A	05-201	29 IR 107	
470 IAC 3.1-7-3	R	05-201	29 IR 109	
470 IAC 3.1-11-2	A	05-201	29 IR 107	
470 IAC 3.1-11-4	A	05-201	29 IR 107	
470 IAC 3.1-12-2	A	05-201	29 IR 108	
470 IAC 3.1-12-7	A	05-201	29 IR 108	
470 IAC 3.1-15-10	A	05-201	29 IR 109	

TITLE 511 INDIANA STATE BOARD OF EDUCATION

511 IAC 1-2.5-1				*ERR (28 IR 3306)
511 IAC 1-3-1	A	04-101	27 IR 3305	**28 IR 965** *ERR (28 IR 3306)

511 IAC 1-3-2				*ERR (28 IR 3306)
511 IAC 1-6-1				*ERR (28 IR 3306)
511 IAC 1-6-2				*ERR (28 IR 3306)
511 IAC 1-6-3				*ERR (28 IR 3306)
511 IAC 1-6-4				*ERR (28 IR 3306)
511 IAC 1-6-5				*ERR (28 IR 3306)
511 IAC 1-7-1				*ERR (28 IR 3306)
511 IAC 1-8-2				*ERR (28 IR 3306)
511 IAC 1-8-7				*ERR (28 IR 3306)
511 IAC 1-8-11				*ERR (28 IR 3306)
511 IAC 1-9	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 4-4-3				*ERR (28 IR 3306)
511 IAC 5-1-1				*ERR (28 IR 3306)
511 IAC 5-2-4				*ERR (28 IR 3306)
511 IAC 5-2-4.5	N	04-214	28 IR 668	**28 IR 2692**
511 IAC 5-3-2				*ERR (28 IR 3306)
511 IAC 6-7-1	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6-7-2				*ERR (28 IR 3306)
511 IAC 6-7-6	RA	04-47	27 IR 2879	**28 IR 323**
				*ERR (28 IR 3306)
511 IAC 6-7-6.1				*ERR (28 IR 3306)
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	**29 IR 801**
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 6-10-1				*ERR (28 IR 3306)
511 IAC 6.1-1-1				*ERR (28 IR 3306)
511 IAC 6.1-1-2				*ERR (28 IR 3306)
511 IAC 6.1-1-4				*ERR (28 IR 3306)
511 IAC 6.1-1-9				*ERR (28 IR 3306)
511 IAC 6.1-1-13.5				*ERR (28 IR 3306)
511 IAC 6.1-2-2.5	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6.1-2-4				*ERR (28 IR 3306)
511 IAC 6.1-2-5				*ERR (28 IR 3306)
511 IAC 6.1-5-1				*ERR (28 IR 3306)
511 IAC 6.1-5-2.5				*ERR (28 IR 3306)
511 IAC 6.1-5-3				*ERR (28 IR 3306)
511 IAC 6.1-5-4	RA	04-47	27 IR 2879	**28 IR 323**
				*ERR (28 IR 3306)
511 IAC 6.1-5-5				*ERR (28 IR 3307)
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 6.1-6-1				*ERR (28 IR 3307)
511 IAC 6.1-6-2				*ERR (28 IR 3307)
511 IAC 6.1-8-1				*ERR (28 IR 3307)
511 IAC 6.1-8-4				*ERR (28 IR 3307)
511 IAC 6.1-9-4				*ERR (28 IR 3307)
511 IAC 6.1-10-1				*ERR (28 IR 3307)
511 IAC 6.1-10-3				*ERR (28 IR 3307)
511 IAC 6.1-10-5				*ERR (28 IR 3307)
511 IAC 6.2-1-1				*ERR (28 IR 3307)
511 IAC 6.2-2-2				*ERR (28 IR 3307)
511 IAC 6.2-2-4				*ERR (28 IR 3307)
511 IAC 6.2-2-5				*ERR (28 IR 3307)
511 IAC 6.2-2-6				*ERR (28 IR 3307)
511 IAC 6.2-2-7				*ERR (28 IR 3307)
511 IAC 6.2-2-8				*ERR (28 IR 3307)
511 IAC 6.2-2-9				*ERR (28 IR 3307)
511 IAC 6.2-2-11				*ERR (28 IR 3307)
511 IAC 6.2-2-12				*ERR (28 IR 3307)
511 IAC 6.2-2.5-4				*ERR (28 IR 3307)
511 IAC 6.2-2.5-9				*ERR (28 IR 3307)
511 IAC 6.2-3-1				*ERR (28 IR 3307)
511 IAC 6.2-3-3				*ERR (28 IR 3307)
511 IAC 6.2-4-1				*ERR (28 IR 3307)
511 IAC 6.2-4-2				*ERR (28 IR 3307)
511 IAC 6.2-4-4				*ERR (28 IR 3307)
511 IAC 6.2-6-2				*ERR (28 IR 3307)
511 IAC 6.2-6-3				*ERR (28 IR 3307)
511 IAC 6.2-6-7				*ERR (28 IR 3307)
511 IAC 6.2-6-10				*ERR (28 IR 3307)
511 IAC 6.2-7-2				*ERR (28 IR 3307)
511 IAC 7-17-16				*ERR (28 IR 3307)
511 IAC 7-18-1				*ERR (28 IR 3307)
511 IAC 7-18-2				*ERR (28 IR 3307)
511 IAC 7-27-4				*ERR (28 IR 3308)
511 IAC 8	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 8-1-1				*ERR (28 IR 3308)
511 IAC 9-1-0.5				*ERR (28 IR 3308)
511 IAC 9-1-1				*ERR (28 IR 3308)
511 IAC 9-1-2				*ERR (28 IR 3308)
511 IAC 9-2-2				*ERR (28 IR 3308)
511 IAC 9-5-2				*ERR (28 IR 3308)
511 IAC 9-5-4				*ERR (28 IR 3308)
511 IAC 9-6-1				*ERR (28 IR 3308)
511 IAC 10-6-1				*ERR (28 IR 3308)
511 IAC 10-6-3				*ERR (28 IR 3308)
511 IAC 10-6-5				*ERR (28 IR 3308)
511 IAC 11-7-3				*ERR (28 IR 3308)
511 IAC 12-2-4				*ERR (28 IR 3308)

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 1-1-89				*ERR (28 IR 3308)
515 IAC 1-1-93				*ERR (28 IR 3308)
515 IAC 1-2-17				*ERR (28 IR 3308)
515 IAC 1-2-18				*ERR (28 IR 3308)
515 IAC 1-4-1	A	03-320	27 IR 2558	*ARR (28 IR 610)
				28 IR 1475
				*ERR (28 IR 3308)
515 IAC 1-4-2	A	03-320	27 IR 2558	*ARR (28 IR 610)
				28 IR 1475
515 IAC 1-6-1				*ERR (28 IR 3308)
515 IAC 1-6-4				*ERR (28 IR 3308)
515 IAC 1-6-6				*ERR (28 IR 3308)
515 IAC 1-7-13				*ERR (28 IR 3308)
515 IAC 1-7-16				*ERR (28 IR 3308)
515 IAC 2-1-3				*ERR (28 IR 3308)
515 IAC 2-1-4				*ERR (28 IR 3308)
515 IAC 4-1-2				*ERR (28 IR 3308)
515 IAC 4-1-3				*ERR (28 IR 3308)
515 IAC 4-2-6				*ERR (28 IR 3308)
515 IAC 4-2-7				*ERR (28 IR 3308)
515 IAC 5-1-4				*ERR (28 IR 3308)
515 IAC 8-1-1				*ERR (28 IR 3308)
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 9-1-1				*ERR (28 IR 3308)
515 IAC 9-1-18				*ERR (28 IR 3309)
515 IAC 9-1-19				*ERR (28 IR 3309)
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 570 INDIANA COMMISSION ON PROPRIETARY EDUCATION

570 IAC 1-1-1	A	05-178	29 IR 111	
570 IAC 1-2-3	A	05-178	29 IR 114	
570 IAC 1-2-4	A	05-178	29 IR 114	
570 IAC 1-3-1	A	05-178	29 IR 114	
570 IAC 1-3-2	A	05-178	29 IR 115	
570 IAC 1-3-3	A	05-178	29 IR 116	
570 IAC 1-4-1	A	05-178	29 IR 116	
570 IAC 1-4-2	A	05-178	29 IR 117	
570 IAC 1-4-3	A	05-178	29 IR 118	
570 IAC 1-4-4	A	05-178	29 IR 119	
570 IAC 1-5-2	A	05-178	29 IR 119	
570 IAC 1-5-3	A	05-178	29 IR 120	
570 IAC 1-5-4	A	05-178	29 IR 120	
570 IAC 1-5-5	A	05-178	29 IR 120	
570 IAC 1-5-6	A	05-178	29 IR 120	
570 IAC 1-5-7	A	05-178	29 IR 121	
570 IAC 1-6-1	A	05-178	29 IR 121	
570 IAC 1-6-2	A	05-178	29 IR 121	
570 IAC 1-6-3	A	05-178	29 IR 121	
570 IAC 1-6-4	A	05-178	29 IR 121	
570 IAC 1-6-6	A	05-178	29 IR 122	
570 IAC 1-8-3	A	05-178	29 IR 122	
570 IAC 1-8-4.5	A	05-178	29 IR 123	
570 IAC 1-8-5.5	N	05-178	29 IR 123	
570 IAC 1-8-7	A	05-178	29 IR 123	
570 IAC 1-9-5	A	05-178	29 IR 124	
570 IAC 1-10.1-4	A	05-178	29 IR 124	
570 IAC 1-10.1-6	A	05-178	29 IR 125	
570 IAC 1-11-4	A	05-178	29 IR 125	
570 IAC 1-11-8	A	05-178	29 IR 125	
570 IAC 1-12-1	A	05-178	29 IR 125	
570 IAC 1-12-2	A	05-178	29 IR 126	
570 IAC 1-13-1	A	05-178	29 IR 126	
570 IAC 1-13-2	A	05-178	29 IR 126	
570 IAC 1-13-3	A	05-178	29 IR 127	
570 IAC 1-13-4	A	05-178	29 IR 127	
570 IAC 1-14-2	A	05-178	29 IR 127	
570 IAC 1-14-3	A	05-178	29 IR 128	
570 IAC 1-14-4	A	05-178	29 IR 128	
570 IAC 1-14-10	A	05-178	29 IR 128	
570 IAC 1-14-11	A	05-178	29 IR 128	

TITLE 575 STATE SCHOOL BUS COMMITTEE

575 IAC 1-1-1				*ERR (28 IR 3583)
575 IAC 1-1-5				*ERR (28 IR 3583)
575 IAC 1-5.5-1				*ERR (28 IR 3583)

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

646 IAC 2-1-2	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-1-4	A	05-228	29 IR 643 29 IR 886	
646 IAC 2-1-9	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-1-13	A	05-228	29 IR 644 29 IR 886	
646 IAC 2-1-15	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-1-16	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-1-17	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-1-19	A	05-228	29 IR 644 29 IR 887	
646 IAC 2-1-20	A	05-228	29 IR 644 29 IR 887	
646 IAC 2-1-21	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-1-23	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-1-24	A	05-228	29 IR 644 29 IR 887	
646 IAC 2-1-27	A	05-228	29 IR 645 29 IR 888	
646 IAC 2-2-2	A	05-228	29 IR 645 29 IR 888	
646 IAC 2-3	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-4	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-5-1	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-5-2	A	05-228	29 IR 646 29 IR 889	
646 IAC 2-6-1	A	05-228	29 IR 647 29 IR 890	
646 IAC 2-7-2	R	05-228	29 IR 649 29 IR 891	
646 IAC 2-7-3	A	05-228	29 IR 647 29 IR 890	
646 IAC 2-7-4	A	05-228	29 IR 647 29 IR 890	
646 IAC 2-8-1	A	05-228	29 IR 648 29 IR 891	
646 IAC 2-9-1	A	05-228	29 IR 648 29 IR 891	
646 IAC 3-1-7	A	05-225	29 IR 641 29 IR 883	
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 3-4-12	N	05-225	29 IR 642 29 IR 884	
646 IAC 3-5-1	A	03-317	27 IR 2859	**28 IR 561**
646 IAC 3-10-9	A	05-128	28 IR 3343 29 IR 882	*ARR (29 IR 820)
646 IAC 3-10-13	A	05-128	28 IR 3343 29 IR 882	*ARR (29 IR 820)

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	*AROC (28 IR 3354) **29 IR 477**
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	*AROC (28 IR 3354) **29 IR 481**
655 IAC 1-2.1-112	N	04-297	28 IR 2423	*AROC (28 IR 3354) **29 IR 485**
655 IAC 1-2.1-113	N	04-297	28 IR 2423	*AROC (28 IR 3354) **29 IR 485**
655 IAC 1-2.1-114	N	04-297	28 IR 2424	*AROC (28 IR 3354) **29 IR 485**
655 IAC 1-2.1-115	N	04-297	28 IR 2425	*AROC (28 IR 3354) **29 IR 486**
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	*AROC (29 IR 146) **29 IR 496**
675 IAC 13-2.4-15		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-19	A	04-216	28 IR 1529	*AROC (29 IR 146) **29 IR 496**
675 IAC 13-2.4-20	A	04-216	28 IR 1530	*AROC (29 IR 146) **29 IR 496**
675 IAC 13-2.4-22	A	04-216	28 IR 1530	*AROC (29 IR 146) **29 IR 496**
675 IAC 13-2.4-24.3	N	04-216	28 IR 1530	*AROC (29 IR 146) **29 IR 496**
675 IAC 13-2.4-32.5	N	04-216	28 IR 1530	*AROC (29 IR 146) **29 IR 497**
675 IAC 13-2.4-40.5	N	04-216	28 IR 1531	*AROC (29 IR 146) **29 IR 497**
675 IAC 13-2.4-40.6	N	04-216	28 IR 1531	*AROC (29 IR 146) **29 IR 497**
675 IAC 13-2.4-41.5	N	04-216	28 IR 1531	*AROC (29 IR 146) **29 IR 497**
675 IAC 13-2.4-42.7	N	04-216	28 IR 1531	*AROC (29 IR 146) **29 IR 497**
675 IAC 13-2.4-43.2	N	04-216	28 IR 1531	*AROC (29 IR 146) **29 IR 497**
675 IAC 13-2.4-43.6	N	04-216	28 IR 1531	*AROC (29 IR 146) **29 IR 497**
675 IAC 13-2.4-47	A	04-216	28 IR 1531	*AROC (29 IR 146) **29 IR 497**
675 IAC 13-2.4-55	A	04-216	28 IR 1533	*AROC (29 IR 146) **29 IR 499**
675 IAC 13-2.4-55.5	N	04-216	28 IR 1533	*AROC (29 IR 146) **29 IR 499**
675 IAC 13-2.4-56.5	N	04-216	28 IR 1533	*AROC (29 IR 146) **29 IR 499**
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	*AROC (29 IR 146)
675 IAC 13-2.4-105.6	N	04-216	28 IR 1533	*AROC (29 IR 146) **29 IR 500**
675 IAC 13-2.4-107.3	N	04-216	28 IR 1534	*AROC (29 IR 146) **29 IR 500**
675 IAC 13-2.4-107.5	N	04-216	28 IR 1534	*AROC (29 IR 146) **29 IR 500**
675 IAC 13-2.4-107.6	N	04-216	28 IR 1534	*AROC (29 IR 146) **29 IR 500**
675 IAC 13-2.4-118	A	04-216	28 IR 1534	*AROC (29 IR 146) **29 IR 500**
675 IAC 13-2.4-118.4	N	04-216	28 IR 1534	*AROC (29 IR 146) **29 IR 500**
675 IAC 13-2.4-121.5	N	04-216	28 IR 1534	*AROC (29 IR 146) **29 IR 500**
675 IAC 13-2.4-122	A	04-216	28 IR 1534	*AROC (29 IR 146) **29 IR 500**

675 IAC 13-2.4-122.5	N	04-216	28 IR 1535	*AROC (29 IR 146) **29 IR 501**
675 IAC 13-2.4-131		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-132	A	04-216	28 IR 1535	*AROC (29 IR 146) **29 IR 501**
675 IAC 13-2.4-132.3	N	04-216	28 IR 1535	*AROC (29 IR 146) **29 IR 501**
675 IAC 13-2.4-132.5	N	04-216	28 IR 1535	*AROC (29 IR 146) **29 IR 501**
675 IAC 13-2.4-133.5	N	04-216	28 IR 1535	*AROC (29 IR 146) **29 IR 501**
675 IAC 13-2.4-134.5	N	04-216	28 IR 1535	*AROC (29 IR 146) **29 IR 501**
675 IAC 13-2.4-143	A	04-216	28 IR 1535	*AROC (29 IR 146) **29 IR 501**
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	*AROC (29 IR 146) **29 IR 502**
675 IAC 13-2.4-201.5	N	04-216	28 IR 1536	*AROC (29 IR 146) **29 IR 502**
675 IAC 13-2.4-201.7	N	04-216	28 IR 1536	*AROC (29 IR 146) **29 IR 502**
675 IAC 13-2.4-210.3	N	04-216	28 IR 1536	*AROC (29 IR 146) **29 IR 502**
675 IAC 13-2.4-210.5	N	04-216	28 IR 1536	*AROC (29 IR 146) **29 IR 502**
675 IAC 13-2.4-213.3	N	04-216	28 IR 1536	*AROC (29 IR 146) **29 IR 502**
675 IAC 13-2.4-213.5	N	04-216	28 IR 1536	*AROC (29 IR 146) **29 IR 502**
675 IAC 13-2.4-213.7	N	04-216	28 IR 1536	*AROC (29 IR 146) **29 IR 503**
675 IAC 13-2.4-214.2	N	04-216	28 IR 1537	*AROC (29 IR 146) **29 IR 503**
675 IAC 13-2.4-214.4	N	04-216	28 IR 1537	*AROC (29 IR 146) **29 IR 503**
675 IAC 13-2.4-214.6	N	04-216	28 IR 1537	*AROC (29 IR 146) **29 IR 503**
675 IAC 13-2.4-214.7	N	04-216	28 IR 1537	*AROC (29 IR 146) **29 IR 503**
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	*AROC (29 IR 146) **29 IR 504**
675 IAC 14-4.2	R	04-194	28 IR 312	**28 IR 3304**
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	**28 IR 3256**
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	**29 IR 806**
675 IAC 14-4.3-213	A	04-273	28 IR 1850	††**29 IR 806**
675 IAC 14-4.3-214	R	04-273	28 IR 1859	††**29 IR 815**
675 IAC 14-4.3-214.5	N	04-273	28 IR 1850	††**29 IR 807**
675 IAC 14-4.3-215	A	04-273	28 IR 1850	††**29 IR 807**
675 IAC 14-4.3-216	A	04-273	28 IR 1851	††**29 IR 807**
675 IAC 14-4.3-217	R	04-273	28 IR 1859	††**29 IR 815**
675 IAC 14-4.3-219.6	N	04-273	28 IR 1851	
675 IAC 14-4.3-220.3	N	04-273	28 IR 1851	††**29 IR 807**
675 IAC 14-4.3-220.6	N	04-273	28 IR 1851	††**29 IR 807**
675 IAC 14-4.3-220.7	N	04-273	28 IR 1851	††**29 IR 808**
675 IAC 14-4.3-220.8	N	04-273	28 IR 1852	††**29 IR 808**
675 IAC 14-4.3-226.2	N	04-273	28 IR 1852	††**29 IR 808**
675 IAC 14-4.3-227.1	N	04-273	28 IR 1852	††**29 IR 808**
675 IAC 14-4.3-227.5	N	04-273	28 IR 1852	††**29 IR 808**
675 IAC 14-4.3-227.6	N	04-273	28 IR 1852	††**29 IR 808**
675 IAC 14-4.3-228	A	04-273	28 IR 1852	††**29 IR 808**
675 IAC 14-4.3-229.5	N	04-273	28 IR 1852	††**29 IR 809**
675 IAC 14-4.3-231	A	04-273	28 IR 1853	††**29 IR 809**
675 IAC 14-4.3-233	A	04-273	28 IR 1853	††**29 IR 809**
675 IAC 14-4.3-233.5	N	04-273	28 IR 1853	††**29 IR 809**
675 IAC 14-4.3-234	A	04-273	28 IR 1853	††**29 IR 810**
675 IAC 14-4.3-235	A	04-273	28 IR 1854	††**29 IR 810**
675 IAC 14-4.3-239.5	N	04-273	28 IR 1854	††**29 IR 810**
675 IAC 14-4.3-241	A	04-273	28 IR 1854	††**29 IR 810**
675 IAC 14-4.3-241.5	N	04-273	28 IR 1854	††**29 IR 810**
675 IAC 14-4.3-242	A	04-273	28 IR 1854	††**29 IR 810**
675 IAC 14-4.3-244.5	N	04-273	28 IR 1854	††**29 IR 810**
675 IAC 14-4.3-245	R	04-273	28 IR 1859	††**29 IR 815**
675 IAC 14-4.3-247	A	04-273	28 IR 1855	††**29 IR 811**
675 IAC 14-4.3-247.5	N	04-273	28 IR 1855	††**29 IR 811**
675 IAC 14-4.3-248.5	N	04-273	28 IR 1855	††**29 IR 811**
675 IAC 14-4.3-249.5	N	04-273	28 IR 1855	††**29 IR 811**
675 IAC 14-4.3-251	R	04-273	28 IR 1859	††**29 IR 815**
675 IAC 14-4.3-252	R	04-273	28 IR 1859	††**29 IR 815**
675 IAC 14-4.3-253	R	04-273	28 IR 1859	††**29 IR 815**
675 IAC 14-4.3-254.5	N	04-273	28 IR 1855	††**29 IR 811**
675 IAC 14-4.3-254.7	N	04-273	28 IR 1855	††**29 IR 811**
675 IAC 15-1-1	R	04-227	28 IR 1053	**29 IR 29**
675 IAC 15-1-2	R	04-227	28 IR 1053	**29 IR 29**
675 IAC 15-1-3	R	04-227	28 IR 1053	**29 IR 29**
675 IAC 15-1-5	R	04-227	28 IR 1053	**29 IR 29**
675 IAC 15-1-6	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-7	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-8.1	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-10	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-11	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-12	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-13	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-14	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-16	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-17	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-19	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-20	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-21	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1-22	R	04-227	28 IR 1054	**29 IR 29**
675 IAC 15-1.1	N	04-227	28 IR 1037	**29 IR 13**
675 IAC 15-1.2	N	04-227	28 IR 1039	**29 IR 15**
675 IAC 15-1.3	N	04-227	28 IR 1046	**29 IR 21**
675 IAC 15-1.4	N	04-227	28 IR 1048	**29 IR 23**
675 IAC 15-1.5	N	04-227	28 IR 1049	**29 IR 25**
675 IAC 15-1.6	N	04-227	28 IR 1051	**29 IR 26**
675 IAC 15-1.7	N	04-227	28 IR 1052	**29 IR 28**
675 IAC 16-1.3	RA	05-3	28 IR 3052	
	RA	05-217		**29 IR 896**
675 IAC 16-2	RA	05-3	28 IR 3052	
	RA	05-217		**29 IR 896**
675 IAC 17-1.6	R	04-273	28 IR 1859	**29 IR 815**
675 IAC 17-1.7	N	04-273	28 IR 1855	**29 IR 811**
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	*AROC (29 IR 146) **29 IR 11**
675 IAC 18-1.4-11.5	N	04-217	28 IR 1309	*AROC (29 IR 146) **29 IR 11**
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	*AROC (29 IR 146) **29 IR 11**
675 IAC 18-1.4-32.5	N	04-217	28 IR 1309	*AROC (29 IR 146) **29 IR 11**
675 IAC 18-1.4-49.5	N	04-217	28 IR 1309	*AROC (29 IR 146) **29 IR 11**

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) *ARR (29 IR 31) **29 IR 487**
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	*AROC (29 IR 147) **29 IR 12**
675 IAC 25-1-7.4	N	04-218	28 IR 1310	*AROC (29 IR 147) **29 IR 12**
675 IAC 25-1-7.6	N	04-218	28 IR 1310	*AROC (29 IR 147) **29 IR 12**
675 IAC 25-1-9.1	N	04-218	28 IR 1310	*AROC (29 IR 147) **29 IR 12**
675 IAC 25-1-9.3	N	04-218	28 IR 1310	*AROC (29 IR 147) **29 IR 12**
675 IAC 25-1-9.5	N	04-218	28 IR 1310	*AROC (29 IR 147) **29 IR 12**
675 IAC 25-1-9.7	N	04-218	28 IR 1310\	*AROC (29 IR 147) **29 IR 12**
675 IAC 25-1-9.9	N	04-218	28 IR 1310	*AROC (29 IR 147) **29 IR 12**
675 IAC 26	N	04-196	28 IR 1031	*CPH (28 IR 1498) *AROC (28 IR 2461) *ARR (29 IR 31) **29 IR 489**
675 IAC 27	N	04-275	28 IR 1538	*AROC (29 IR 145) **29 IR 504**

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	*CPH (28 IR 3322)
710 IAC 1-22	N	05-81	28 IR 3009	*CPH (28 IR 3322)

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 1-50-6	RA	05-86		**29 IR 896**
760 IAC 1-50-9	RA	05-86		**29 IR 896**
760 IAC 1-50-10	RA	05-86		**29 IR 896**
760 IAC 1-50-11	RA	05-86		**29 IR 896**
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 1-61	RA	05-86		**29 IR 896**
760 IAC 1-64	RA	05-86		**29 IR 896**
760 IAC 1-68-1	A	05-75	29 IR 129	

760 IAC 1-68-2	A	05-75	29 IR 130	
760 IAC 1-68-4	A	05-75	29 IR 132	
760 IAC 1-68-6	A	05-75	29 IR 133	
760 IAC 1-68-8	A	05-75	29 IR 134	
760 IAC 1-68-9	A	05-75	29 IR 134	
760 IAC 1-68-10	A	05-75	29 IR 134	
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	**29 IR 547**
760 IAC 1-72	N	05-134	29 IR 649	
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	**29 IR 517**
760 IAC 3-2-2.5	A	05-5	28 IR 2426	
			28 IR 3013	**29 IR 517**
760 IAC 3-2-6.1	A	05-5	28 IR 2426	
			28 IR 3013	**29 IR 517**
760 IAC 3-2-6.2	A	05-5	28 IR 2426	
			28 IR 3013	**29 IR 517**
760 IAC 3-2-7	A	05-5	28 IR 2426	
			28 IR 3014	**29 IR 517**
760 IAC 3-4-1	A	05-5	28 IR 2427	
			28 IR 3014	**29 IR 518**
760 IAC 3-5-1	A	05-5	28 IR 2427	
			28 IR 3014	**29 IR 518**
760 IAC 3-6-1	A	05-5	28 IR 2428	
			28 IR 3016	**29 IR 519**
760 IAC 3-7-1	A	05-5	28 IR 2432	
			28 IR 3019	**29 IR 523**
760 IAC 3-8-1	A	05-5	28 IR 2434	
			28 IR 3021	**29 IR 525**
760 IAC 3-9-1	A	05-5	28 IR 2437	
			28 IR 3024	**29 IR 528**
760 IAC 3-9-2	A	05-5	28 IR 2437	
			28 IR 3024	**29 IR 528**
760 IAC 3-11-1	A	05-5	28 IR 2439	
			28 IR 3026	**29 IR 530**
				*ERR (29 IR 548)
760 IAC 3-12-1	A	05-5	28 IR 2444	
			28 IR 3031	**29 IR 534**
760 IAC 3-14-1	A	05-5	28 IR 2445	
			28 IR 3032	**29 IR 535**
760 IAC 3-15-1	A	05-5	28 IR 2453	
			28 IR 3040	**29 IR 544**
760 IAC 3-18-1	A	05-5	28 IR 2455	
			28 IR 3043	**29 IR 546**
				*ERR (29 IR 548)

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 816 BOARD OF BARBER EXAMINERS

816 IAC 1-2-11	A	05-146	29 IR 893	
816 IAC 1-3-1	R	05-146	29 IR 895	
816 IAC 1-3-4	A	05-146	29 IR 894	
816 IAC 1-3-6	A	05-146	29 IR 894	
816 IAC 1-4-1	A	05-146	29 IR 894	
816 IAC 1-5	N	05-146	29 IR 895	

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 2-2-2	R	05-137	29 IR 656	
820 IAC 4-1-7	A	05-68	28 IR 3045	*AWR (28 IR 3584)
820 IAC 4-1-9	A	05-68	28 IR 3045	*AWR (28 IR 3584)
820 IAC 4-1-11	A	05-68	28 IR 3045	*AWR (28 IR 3584)
820 IAC 4-1-12	A	05-68	28 IR 3045	*AWR (28 IR 3584)
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	*AWR (28 IR 3584)
820 IAC 4-4-8.1	N	05-68	28 IR 3046	*AWR (28 IR 3584)
820 IAC 5-1-20	A	05-137	29 IR 654	
820 IAC 6-1-2	A	05-137	29 IR 654	
820 IAC 6-1-5	A	05-137	29 IR 655	
820 IAC 7	N	05-137	29 IR 655	

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	**28 IR 3662**

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

840 IAC 2-1	RA	05-12	28 IR 2459	**28 IR 3353**

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

844 IAC 5-5	N	05-91	28 IR 3344	*ARR (29 IR 549)
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**
848 IAC 7	N	05-2	29 IR 135	

TITLE 852 INDIANA OPTOMETRY BOARD

852 IAC 1-12-1	A	05-184	29 IR 657	

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	**29 IR 815**
856 IAC 1-38	N	05-138	29 IR 659	
856 IAC 1-39	N	05-139	29 IR 139	
856 IAC 1-40	N	05-140	29 IR 142	
856 IAC 3-1-2	N	05-102	28 IR 3346	*ARR (29 IR 820)
856 IAC 3-1-3	N	05-102	28 IR 3346	*ARR (29 IR 820)
856 IAC 3-2-1	R	05-102	28 IR 3348	*ARR (29 IR 820)
856 IAC 3-2-3	A	05-102	28 IR 3346	*ARR (29 IR 820)
856 IAC 3-2-7	R	05-102	28 IR 3348	*ARR (29 IR 820)
856 IAC 3-2-8	R	05-102	28 IR 3348	*ARR (29 IR 820)
856 IAC 3-3	N	05-102	28 IR 3346	*ARR (29 IR 820)
856 IAC 3-4	N	05-102	28 IR 3347	*ARR (29 IR 820)
856 IAC 3-5	N	05-102	28 IR 3347	*ARR (29 IR 820)
856 IAC 3-6	N	05-102	28 IR 3347	*ARR (29 IR 820)
856 IAC 3-7	N	05-102	28 IR 3348	*ARR (29 IR 820)

TITLE 857 INDIANA OPTOMETRIC LEGEND DRUG PRESCRIPTION ADVISORY COMMITTEE

857 IAC 1-2-3	A	05-43	28 IR 3048	**29 IR 816**
857 IAC 1-3-2	A	05-43	28 IR 3049	**29 IR 817**
857 IAC 1-3-3	A	05-43	28 IR 3049	**29 IR 817**

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 1-1-1	A	05-82	29 IR 660	
865 IAC 1-1-2	A	05-82	29 IR 661	
865 IAC 1-2-1	A	05-82	29 IR 661	
865 IAC 1-2-2	A	05-82	29 IR 663	
865 IAC 1-3-2	A	05-82	29 IR 663	
865 IAC 1-4-3	A	05-82	29 IR 663	

865 IAC 1-4-6	A	05-82	29 IR 664	
865 IAC 1-4-7	A	05-82	29 IR 664	
865 IAC 1-4-8	A	05-82	29 IR 664	
865 IAC 1-4-9	R	05-82	29 IR 687	
865 IAC 1-5-1	A	05-82	29 IR 665	
865 IAC 1-5-2	A	05-82	29 IR 665	
865 IAC 1-7-1	A	05-82	29 IR 665	
865 IAC 1-7-2	A	05-82	29 IR 666	
865 IAC 1-7-3	A	05-82	29 IR 666	
865 IAC 1-7-4	N	05-82	29 IR 667	
865 IAC 1-8-1	A	05-82	29 IR 667	
865 IAC 1-9-1	A	05-82	29 IR 668	
865 IAC 1-10-11	R	05-82	29 IR 687	
865 IAC 1-10-12	A	05-82	29 IR 668	
865 IAC 1-10-25	N	05-82	29 IR 668	
865 IAC 1-11-1	A	03-300	27 IR 2570	**28 IR 605**
	A	04-175	28 IR 1059	**28 IR 2390**
865 IAC 1-12-2	A	05-82	29 IR 668	
865 IAC 1-12-3	A	05-82	29 IR 669	
865 IAC 1-12-4	A	05-82	29 IR 670	
865 IAC 1-12-5	A	05-82	29 IR 670	
865 IAC 1-12-7	A	05-82	29 IR 671	
865 IAC 1-12-8	R	05-82	29 IR 687	
865 IAC 1-12-9	A	05-82	29 IR 672	
865 IAC 1-12-10	A	05-82	29 IR 672	
865 IAC 1-12-12	A	05-82	29 IR 672	
865 IAC 1-12-13	A	05-82	29 IR 674	
865 IAC 1-12-14	A	05-82	29 IR 675	
865 IAC 1-12-15	R	05-82	29 IR 687	
865 IAC 1-12-16	R	05-82	29 IR 687	
865 IAC 1-12-17	R	05-82	29 IR 687	
865 IAC 1-12-18	A	05-82	29 IR 676	
865 IAC 1-12-19	R	05-82	29 IR 687	
865 IAC 1-12-20	A	05-82	29 IR 677	
865 IAC 1-12-21	A	05-82	29 IR 677	
865 IAC 1-12-22	A	05-82	29 IR 678	
865 IAC 1-12-23	A	05-82	29 IR 679	
865 IAC 1-12-24	A	05-82	29 IR 679	
865 IAC 1-12-25	A	05-82	29 IR 680	
865 IAC 1-12-26	R	05-82	29 IR 687	
865 IAC 1-12-27	A	05-82	29 IR 681	
865 IAC 1-12-28	A	05-82	29 IR 681	
865 IAC 1-12-29	A	05-82	29 IR 682	
865 IAC 1-12-30	N	05-82	29 IR 682	
865 IAC 1-13-2	A	05-82	29 IR 684	
865 IAC 1-13-5	A	05-82	29 IR 684	
865 IAC 1-13-7	A	05-82	29 IR 685	
865 IAC 1-13-8	A	05-82	29 IR 685	
865 IAC 1-13-10	A	05-82	29 IR 685	
865 IAC 1-13-11	A	05-82	29 IR 686	
865 IAC 1-13-19	A	05-82	29 IR 686	
865 IAC 1-14-2	A	05-82	29 IR 686	
865 IAC 1-14-13	A	05-82	29 IR 686	
865 IAC 1-14-14	A	05-82	29 IR 687	
865 IAC 1-14-15	A	05-82	29 IR 687	
865 IAC 1-14-16	A	05-82	29 IR 687	

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 1-2-1	A	04-290	28 IR 3349	
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**
872 IAC 1-6	N	03-270	27 IR 2571	*AROC (27 IR 4141)
				28 IR 966

TITLE 876 INDIANA REAL ESTATE COMMISSION

876 IAC 1-1-23	A	05-47	28 IR 2807	*CPH (28 IR 3609)
876 IAC 1-4-2	A	05-101	28 IR 3658	
876 IAC 2-18	N	03-256	27 IR 2575	**28 IR 213**
876 IAC 3-2-7	A	03-255	27 IR 2574	**28 IR 212**
876 IAC 3-6-2	A	04-225	28 IR 1547	**28 IR 2717**
876 IAC 3-6-3	A	04-225	28 IR 1548	**28 IR 2717**
876 IAC 4-1-6	A	05-49	28 IR 2808	*CPH (28 IR 3609)
876 IAC 4-2-1	A	05-49	28 IR 2809	*CPH (28 IR 3609)
876 IAC 4-3	N	05-49	28 IR 2809	*CPH (28 IR 3609)

TITLE 878 HOME INSPECTORS LICENSING BOARD

878 IAC	N	04-191	28 IR 1060	*CPH (28 IR 1197)
				*AROC (28 IR 1560)
				28 IR 2718

TITLE 879 MANUFACTURED HOME INSTALLER LICENSING BOARD

879 IAC	N	04-272	28 IR 1549	**28 IR 2981**

TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

888 IAC 1.1-5-3	N	05-185	29 IR 688	
888 IAC 1.1-6-1	A	04-74	27 IR 2875	**28 IR 606**
	A	04-137	27 IR 3704	**28 IR 607**
888 IAC 1.1-8-3	A	04-295	28 IR 1859	**28 IR 3581**

TITLE 898 INDIANA ATHLETIC TRAINERS BOARD

898 IAC 1-1-2.4	RA	05-13	28 IR 2460	**29 IR 144**
898 IAC 1-1-4.5	RA	05-13	28 IR 2460	**29 IR 144**
898 IAC 1-1-10	RA	05-13	28 IR 2460	**29 IR 144**

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

905 IAC 1-5.2-9.2	A	04-111	27 IR 3337	*AROC (28 IR 1561)
905 IAC 1-15.2-3	A	04-110	27 IR 3337	*AWR (28 IR 1486)
905 IAC 1-26-3	N	04-112	27 IR 3338	*AROC (28 IR 1562)
905 IAC 1-43	RA	04-14	27 IR 2579	*CPH (27 IR 3096)
				28 IR 1316
905 IAC 1-44	RA	04-109	27 IR 3343	**28 IR 1316**
905 IAC 1-45-2	A	03-319	27 IR 2576	*CPH (27 IR 3096)
				*AROC (28 IR 1317)
				28 IR 1484
905 IAC 1-45-3	A	03-319	27 IR 2576	*CPH (27 IR 3096)
				*AROC (28 IR 1317)
				28 IR 1484
905 IAC 1-46	N	03-279	27 IR 1291	*ARR (27 IR 4024)
				*AROC (27 IR 4141)
				28 IR 969
905 IAC 1-48	N	04-115	27 IR 3339	*AROC (28 IR 1562)

TITLE 910 CIVIL RIGHTS COMMISSION

910 IAC 3	RA	05-153		**29 IR 897**

NONCODE RULES

Family and Social Services, Office of the Secretary of			
	A	04-246	*ETR (28 IR 230)
	A	05-283	*ETR (29 IR 573)
Gaming Commission, Indiana			
	N	05-84	*ETR (28 IR 2744)
	N	05-202	*ETR (28 IR 3599)
Lottery Commission, State			
	N	04-238	*ETR (28 IR 217)
	N	04-239	*ETR (28 IR 218)
	N	04-240	*ETR (28 IR 219)
	N	04-242	*ETR (28 IR 223)
	N	04-243	*ETR (28 IR 224)
	N	04-244	*ETR (28 IR 226)
	R	04-249	*ETR (28 IR 227)
	N	04-250	*ETR (28 IR 227)
	N	04-251	*ETR (28 IR 228)
	N	04-265	*ETR (28 IR 613)
	N	04-266	*ETR (28 IR 614)
	N	04-280	*ETR (28 IR 972)

N	04-281	*ETR (28 IR 973)
N	04-282	*ETR (28 IR 974)
N	04-301	*ETR (28 IR 1186)
N	04-302	*ETR (28 IR 1187)
N	04-303	*ETR (28 IR 1188)
N	04-304	*ETR (28 IR 1189)
N	04-305	*ETR (28 IR 1191)
N	04-306	*ETR (28 IR 1192)
N	04-326	*ETR (28 IR 1488)
N	04-327	*ETR (28 IR 1489)
N	04-328	*ETR (28 IR 1491)
N	04-331	*ETR (28 IR 1495)
N	04-332	*ETR (28 IR 1496)
N	05-6	*ETR (28 IR 1698)
N	05-7	*ETR (28 IR 1701)
N	05-8	*ETR (28 IR 1702)
N	05-9	*ETR (28 IR 1704)
N	05-10	*ETR (28 IR 1704)
N	05-16	*ETR (28 IR 1708)
N	05-17	*ETR (28 IR 1709)
N	05-29	*ETR (28 IR 2143)
N	05-30	*ETR (28 IR 2144)
N	05-31	*ETR (28 IR 2145)
N	05-33	*ETR (28 IR 2150)
N	05-34	*ETR (28 IR 2152)
N	05-61	*ETR (28 IR 2395)
N	05-62	*ETR (28 IR 2397)
N	05-63	*ETR (28 IR 2398)
N	05-64	*ETR (28 IR 2399)
N	05-65	*ETR (28 IR 2401)
N	05-96	*ETR (28 IR 2740)
N	05-97	*ETR (28 IR 2742)
N	05-98	*ETR (28 IR 2743)
N	05-158	*ETR (28 IR 3311)
N	05-160	*ETR (28 IR 3315)
N	05-169	*ETR (28 IR 3316)
N	05-170	*ETR (28 IR 3318)
N	05-186	*ETR (28 IR 3589)
N	05-187	*ETR (28 IR 3590)
N	05-204	*ETR (28 IR 3590)
N	05-205	*ETR (28 IR 3592)
N	05-206	*ETR (28 IR 3594)
N	05-207	*ETR (28 IR 3595)
N	05-208	*ETR (28 IR 3596)
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N	05-301	*ETR (29 IR 568)
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N	05-305	*ETR (29 IR 571)
N	05-306	*ETR (29 IR 822)
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N	05-310	*ETR (29 IR 824)
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R	04-245	*ETR (28 IR 230)
		*ERR (28 IR 214)
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R	04-257	*ETR (28 IR 615)
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N	05-172	*ETR (28 IR 3310)
N	05-277	*ETR (29 IR 555)

*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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*The index is cumulative for all proposed and final rulemaking actions published after September 1, 2004. Final rules published before that date have been incorporated into the 2005 edition of the Indiana Administrative Code. Indiana Register citations in roman type are to the volume and page on which the proposed version of the rule appears. Entries in **bold** type indicate the page on which a final rule filed with the Secretary of State appears.

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