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Code (See p. 1198)

PUBLIC COMMENTS REQUESTED:

*Under **HEA 1135** (P.L.215-2005),
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Register will be published only on
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basis. Written comments and
suggestions concerning these
changes may be sent to:*

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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:
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 on an individual document basis.	
March 10, 2006	April 1, 2006		
April 10, 2006	May 1, 2006		

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

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

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

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

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

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

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

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

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

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

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

State Agencies

AGENCY		ALPHABETICAL LIST	
AGENCY	TITLE NUMBER	AGENCY	TITLE NUMBER
Accountancy, Indiana Board of	872	†Human Service Programs, Interdepartmental Board for the Coordination of	490
Accounts, State Board of	20	†Industrial Board of Indiana	630
Adjutant General	270	Inspector General, Office of the	42
Administration, Indiana Department of	25	Insurance, Department of	760
†Administrative Building Council of Indiana	660	Labor, Department of	610
†Aeronautics Commission of Indiana	110	Land Surveyors, State Board of Registration for	865
†Aging and Community Services, Department on	450	Law Enforcement Training Board	250
†Agricultural Development Corporation, Indiana	770	Library and Historical Board, Indiana	590
†Agricultural Experiment Station	350	†Library Certification Board	595
†Agriculture, Commissioner of	340	Local Government Finance, Department of	50
Agriculture, Department of	375	Lottery Commission, State	65
†Air Pollution Control Board	325.1	Manufactured Home Installer Licensing Board	879
Air Pollution Control Board	326	†Medical and Nursing Distribution Loan Fund Board of	
†Air Pollution Control Board of the State of Indiana	325	Trustees, Indiana	580
Alcohol and Tobacco Commission	905	Medical Licensing Board of Indiana	844
Amusement Device Safety Board, Regulated	685	Mental Health and Addiction, Division of	440
Animal Health, Indiana State Board of	345	Meridian Street Preservation Commission	925
Architects and Landscape Architects, Board of Registration for	804	Motor Vehicles, Bureau of	140
Athletic Trainers Board, Indiana	898	†Natural Resources, Department of	310
Attorney General for the State, Office of	10	Natural Resources Commission	312
Auctioneer Commission, Indiana	812	Nursing, Indiana State Board of	848
Barber Examiners, Board of	816	Occupational Safety Standards Commission	620
Boiler and Pressure Vessel Rules Board	680	Office of Technology	28
Boxing Commission, State	808	Optometric Legend Drug Prescription Advisory Committee, Indiana	857
Budget Agency	85	Optometry Board, Indiana	852
Chemist of the State of Indiana, State	355	Parole Board	220
Children's Health Insurance Program, Office of the	407	†Personnel Board, State	30
Child Services, Department of	465	Personnel Department, State	31
Chiropractic Examiners, Board of	846	Pesticide Review Board, Indiana	357
Civil Rights Commission	910	Pharmacy, Indiana Board of	856
†Clemency Commission, Indiana	230	Plumbing Commission, Indiana	860
Commerce, Department of	55	Podiatric Medicine, Board of	845
Community Residential Facilities Council	431	Police Department, State	240
Consumer Protection Division of the Office of the Attorney General	11	Political Subdivision Risk Management Commission, Indiana	762
Controlled Substances Advisory Committee	858	Port Commission, Indiana	130
Coroners Training Board	207	Preparedness and Training, Division of	280
Correction, Department of	210	Private Detectives Licensing Board	862
Cosmetology Examiners, State Board of	820	Professional Standards, Advisory Board of the Division of	515
Creamery Examining Board	365	Proprietary Education, Indiana Commission on	570
Criminal Justice Institute, Indiana	205	Psychology Board, State	868
Deaf Board, Indiana School for the	514	Public Access Counselor, Office of the	62
Dentistry, State Board of	828	Public Employees' Retirement Fund, Board of Trustees of the	35
†Developmental Disabilities Residential Facilities Council	430	Public Records, Oversight Committee on	60
Dietitians Certification Board, Indiana	830	Real Estate Commission, Indiana	876
Disability, Aging, and Rehabilitative Services, Division of	460	†Reciprocity Commission of Indiana	145
†Education, Commission on General	510	Revenue, Department of State	45
Education, Indiana State Board of	511	Safety Review, Board of	615
Education Employment Relations Board, Indiana	560	School Bus Committee, State	575
Education Savings Authority, Indiana	540	Secretary of State	75
Egg Board, State	370	Securities Division	710
†Election Board, State	15	Seed Commissioner, State	360
Election Commission, Indiana	18	Social Worker, Marriage and Family Therapist, and Mental Health	
†Elevator Safety Board	670	Counselor Board	839
Emergency Management Agency, State	290	†Soil and Water Conservation Committee, State	311
Emergency Medical Services Commission, Indiana	836	Soil Scientists, Indiana Board of Registration for	307
Employees' Appeals Commission, State	33	†Solid Waste Management Board	320.1
†Employment and Training Services, Department of	645	Solid Waste Management Board	329
Engineers, State Board of Registration for Professional	864	Speech-Language Pathology and Audiology Board	880
Enterprise Zone Board	58	†Standardbred Board of Regulations, Indiana	341
Environmental Adjudication, Office of	315	†Stream Pollution Control Board of the State of Indiana	330
Environmental Health Specialists, Board of	896	Student Assistance Commission, State	585
†Environmental Management Board, Indiana	320	Tax Review, Indiana Board of	52
Ethics Commission, State	40	†Teacher Training and Licensing, Commission on	530
Fair Commission, State	80	Teachers' Retirement Fund, Board of Trustees of the Indiana State	550
Family Resources, Division of	470	†Television and Radio Service Examiners, Board of	884
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Financial Institutions, Department of	750	†Traffic Safety, Office of	150
†Fire Marshal, State	650	†Transportation, Department of	100
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Firefighting Personnel Standards and Education, Board of	655	Underground Storage Tank Financial Assurance Board	328
Forensic Sciences, Commission on	415	†Unemployment Insurance Board, Indiana	640
Funeral and Cemetery Service, State Board of	832	Utility Regulatory Commission, Indiana	170
Gaming Commission, Indiana	68	†Vehicle Inspection, Department of	160
Geologists, Indiana Board of Licensure for Professional	305	Veterans' Affairs Commission	915
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Grain Indemnity Corporation, Indiana	825	Victim Services Division	203
†Hazardous Waste Facility Site Approval Authority, Indiana	323	†Violent Crime Compensation Division	480
Health, Indiana State Department of	410	†Vocational and Technical Education, Indiana Commission on	572
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Health Facility Administrators, Indiana State Board of	840	War Memorials Commission, Indiana	920
†Highways, Department of	120	†Watch Repairing, Indiana State Board of Examiners in	892
Home Inspectors Licensing Board	878	Water Pollution Control Board	327
†Horse Racing Commission, Indiana	70	†Water Pollution Control Board	330.1
Horse Racing Commission, Indiana	71	Worker's Compensation Board of Indiana	631
Hospital Council	414	Workforce Development, Department of	646
Housing and Community Development Authority, Indiana	930		

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

State Agencies

NUMERICAL LIST

TITLE NUMBER

GENERAL GOVERNMENT

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

TRANSPORTATION AND PUBLIC UTILITIES

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

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

NATURAL RESOURCES, ENVIRONMENT, AND AGRICULTURE

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

TITLE NUMBER

†450	Department on Aging and Community Services
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

EDUCATION AND LIBRARIES

†510	Commission on General Education
511	Indiana State Board of Education
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

LABOR AND INDUSTRIAL SAFETY

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

BUSINESS, FINANCE, AND INSURANCE

710	Securities Division
750	Department of Financial Institutions
760	Department of Insurance
762	Indiana Political Subdivision Risk Management Commission
†770	Indiana Agricultural Development Corporation
804	Board of Registration for Architects and Landscape Architects
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

INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

840	Indiana State Board of Health Facility Administrators
844	Medical Licensing Board of Indiana
845	Board of Podiatric Medicine
846	Board of Chiropractic Examiners
848	Indiana State Board of Nursing
852	Indiana Optometry Board
856	Indiana Board of Pharmacy
857	Indiana Optometric Legend Drug Prescription Advisory Committee
858	Controlled Substances Advisory Committee
860	Indiana Plumbing Commission
862	Private Detectives Licensing Board
864	State Board of Registration for Professional Engineers
865	State Board of Registration for Land Surveyors
868	State Psychology Board
872	Indiana Board of Accountancy
876	Indiana Real Estate Commission
878	Home Inspectors Licensing Board
879	Manufactured Home Installer Licensing Board
880	Speech-Language Pathology and Audiology Board
†884	Board of Television and Radio Service Examiners
888	Indiana Board of Veterinary Medical Examiners
†892	Indiana State Board of Examiners in Watch Repairing
896	Board of Environmental Health Specialists
898	Indiana Athletic Trainers Board

MISCELLANEOUS

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

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

**TITLE 25 INDIANA DEPARTMENT OF
ADMINISTRATION**

LSA Document #05-123(F)

DIGEST

Adds 25 IAC 6 to establish rules regulating the registration of executive branch lobbyists. Effective 30 days after filing with the Secretary of State.

25 IAC 6

SECTION 1. 25 IAC 6 IS ADDED TO READ AS FOLLOWS:

ARTICLE 6. EXECUTIVE BRANCH LOBBYISTS**Rule 1. Definitions****25 IAC 6-1-1 Definitions**

Authority: IC 4-13-1-4.2

Affected: IC 4-2-6-1; IC 4-2-6-11.5; IC 4-21.5-2-4; IC 4-21.5-2-6; IC 4-22-2-3; IC 5-14-1.5; IC 5-16; IC 5-22; IC 8-23; IC 20-12-0.5-1; IC 36-1-2-13; Article 1, Section 31 of the Constitution of the State of Indiana

Sec. 1. The following definitions apply throughout this article:

- (1) "Agency" has the meaning set forth in IC 4-2-6-1.
- (2) "Communication" means the exchange of any thoughts, messages, or information by:
 - (A) contact in person;
 - (B) telephone;
 - (C) letter;
 - (D) telegraph;
 - (E) facsimile;
 - (F) electronic mail;
 - (G) text messaging; or
 - (H) any other form of electronic transmission of information.
- (3) "Department" means the Indiana department of administration.
- (4) "Employer" means the person that principally employs the executive branch lobbyist. The term does not include a person that only retains or contracts with an executive branch lobbyist as an independent contractor and does not directly employ that executive branch lobbyist.
- (5) "Engage" or "engagement" means any arrangement whereby a person receives financial consideration, in the form of salary, retainer, compensation, or other fee, for or on behalf of any employer or real party in interest to:
 - (A) influence an executive branch action; or
 - (B) conduct any executive branch lobbying activity.
- (6) "Executive branch action" means a decision of an agency regarding either of the following:
 - (A) The expenditure of state funds with respect to the award of:
 - (i) a contract;

- (ii) a lease; or
 - (iii) any other financial arrangement;
- under which such funds are distributed or allocated.

(B) The:

- (i) proposal;
- (ii) drafting;
- (iii) development;
- (iv) consideration;
- (v) promulgation;
- (vi) amendment;
- (vii) repeal; or
- (viii) rejection;

by any agency of a rule as defined by IC 4-22-2-3(b).

(7) "Executive branch lobbying activity" means action or communication made to delay, oppose, promote, or otherwise influence the outcome of an executive branch action. The term does not include any of the following:

(A) The application or negotiation of an award for any state or federal grant.

(B) The resolution of any outstanding tax matter, including:

- (i) audits;
- (ii) administrative appeals;
- (iii) claims for refund; or
- (iv) collection activity;

with the department of state revenue or the department of local government finance.

(C) Communication regarding the award of incentives related to an economic development project negotiated by the Indiana Economic Development Corporation.

(D) Paid advertising communications that are disseminated to the public by any of the following:

- (i) Radio.
- (ii) Television.
- (iii) A newspaper or periodical of general circulation.

(E) Any communications, including testimony submitted during public hearing or submitted in writing, at a meeting conducted pursuant to IC 5-14-1.5.

(F) A response to a request for proposal, a bid, a request for quote, or other solicitation made by an agency in conformance with applicable public works or procurement statutes or rules promulgated thereunder.

(G) Other public or private testimony or communications solicited by an agency. The agency soliciting testimony or communications must keep written documentation for a period of four (4) years detailing with particularity the public policy purpose for extending each such invitation.

(H) As provided by IC 4-2-6-11.5, any action or communication made as a member of a board, commission, committee, council, taskforce, workgroup or other advisory body of the executive department that is authorized only to make nonbinding recommendations.

(8) "Executive branch lobbyist" means any individual who is employed and receives payment, or who contracts for financial consideration, exceeding one thousand dollars

(\$1,000) in any registration year, for the purpose of engaging in executive branch lobbying activity. The term does not include any of the following:

(A) An elected or appointed officer, employee, or special state appointee of a federal or state agency, the judicial department of state government, the legislative department of state government, a state educational institution (as defined in IC 20-12-0.5-1), or a political subdivision (as defined in IC 36-1-2-13) who attempts to influence an executive branch action that is within the scope of the individual's employment or official duties.

(B) An attorney or any other individual who represents a client in any proceeding conducted under IC 4-21.5, in a comparable proceeding conducted by an agency exempted by IC 4-21.5-2-4, or in a proceeding described in IC 4-21.5-2-6.

(C) A person who represents a religious organization for the purpose of protecting the organization's constitutional rights.

(D) Any newspaper or other periodical of general circulation, book publisher, news wire service, or radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical or radio or television station) that in the ordinary course of business publishes news items, editorials, or other comments or paid advertisement that directly or indirectly urge executive branch action if such newspaper, periodical, book publisher, radio or television station, or individual engages in no additional activities in connection with executive branch actions.

(E) A person whose communication with an agency is for the sole purpose of gathering information relating to a bid, procurement, or public work that is produced in a public record done under and in full compliance with:

- (i) IC 5-16 (state public works);
- (ii) IC 5-22 (public procurement); or
- (iii) IC 8-23 (Indiana department of transportation highway contracts).

(F) An individual acting:

- (i) on his or her own behalf; or
- (ii) under Article 1, Section 31 of the Constitution of the State of Indiana;

who assembles together with other individuals for the common good or petitions an agency for redress of grievances.

(9) "Financial arrangement" means the purchase or acquisition of any:

- (A) property;
- (B) interest in property;
- (C) service; or
- (D) other asset;

of an agency valued in excess of ten thousand dollars (\$10,000).

(10) "Person" means any:

- (A) individual;
- (B) proprietorship;

- (C) partnership;
- (D) unincorporated association;
- (E) trust;
- (F) business trust;
- (G) group;
- (H) limited liability company; or
- (I) corporation;

whether or not operated for profit.

(11) "Real party in interest" means the person on whose behalf the executive branch lobbyist is acting, if that person is not the employer.

(Indiana Department of Administration; 25 IAC 6-1-1; filed Dec 2, 2005, 2:00 p.m.: 29 IR 1202)

Rule 2. Registration Requirements

25 IAC 6-2-1 Initial registration statement

Authority: IC 4-13-1-4.2

Affected: IC 4-2-6

Sec. 1. Within fifteen (15) business days of making any contact with an agency regarding an executive branch action, an executive branch lobbyist shall file with the department a signed initial registration statement on a form approved by the commissioner, which shall include the following information:

- (1) The name, business address, telephone number, electronic mail address, and occupation of the executive branch lobbyist.
- (2) The name, business address, telephone number, and electronic mail address of the:

(A) executive branch lobbyist's employer; and

(B) any real party in interest on whose behalf the executive branch lobbyist is acting, if it is different from the employer.

(3) A brief description of the subject matter to which the engagement or engagements relate.

(4) The identity of the agency or agencies to which the engagement or engagements relate.

(5) A verified statement certifying that in the course of engaging in any executive branch lobbying activity, the executive branch lobbyist has read and will comply with the following:

(A) The state statutes governing ethics and conflicts of interest set forth in IC 4-2-6 and rules promulgated thereunder; and

(B) The state statutes governing the office of the inspector general and rules promulgated thereunder.

(Indiana Department of Administration; 25 IAC 6-2-1; filed Dec 2, 2005, 2:00 p.m.: 29 IR 1203)

25 IAC 6-2-2 Annual reports

Authority: IC 4-13-1-4.2

Affected: IC 4-2-6; IC 4-2-7

Sec. 2. (a) In addition to filing an initial registration statement under section 1 of this rule, starting in 2007, an

executive branch lobbyist shall file with the department not later than January 15, a signed annual report on a form approved by the commissioner, which shall include the following information:

- (1) The name, business address, telephone number, electronic mail address, and occupation of the executive branch lobbyist.
- (2) The name, business address, telephone number, and electronic mail address of the executive branch lobbyist's principal employer.
- (3) The name, business address, and electronic mail address of each real party in interest represented by the executive branch lobbyist that has a continuing engagement described in the initial registration statement filed by the executive branch lobbyist.
- (4) The total amount of payments received for each engagement during the past year.
- (5) A brief description of the subject matter for the executive branch lobbying activities in which the executive branch lobbyist was engaged during the past year.
- (6) The identity of the agency or agencies to which the executive branch lobbying activities during the past year were directed.

(b) With each annual report, an executive branch lobbyist must file a verified statement certifying that in the course of engaging in any executive branch lobbying activity, the executive branch lobbyist has read and complied with the following:

- (1) The state statutes governing ethics and conflicts of interest set forth in IC 4-2-6 and rules promulgated thereunder; and
- (2) The state statutes governing the office of the inspector general as set forth in IC 4-2-7 and rules promulgated thereunder.

(Indiana Department of Administration; 25 IAC 6-2-2; filed Dec 2, 2005, 2:00 p.m.: 29 IR 1203)

25 IAC 6-2-3 Amendments; changes in information; notice of termination

Authority: IC 4-13-1-4.2
Affected: IC 4-13-1-4.2

Sec. 3. (a) If a material change occurs in any of the information contained in a registration statement, an appropriate amendment shall be filed with the department within fifteen (15) days after the change.

(b) Each registered executive branch lobbyist shall file a notice of termination with the department within fifteen (15) days after the end of the engagement; however, this does not relieve the executive branch lobbyist of the reporting requirements of section 2 of this rule. *(Indiana Department of Administration; 25 IAC 6-2-3; filed Dec 2, 2005, 2:00 p.m.: 29 IR 1204)*

Rule 3. Duties of the Commissioner

25 IAC 6-3-1 Duties of the commissioner

Authority: IC 4-13-1-4.2
Affected: IC 5-14-3

Sec. 1. (a) The commissioner shall:

(1) prescribe forms for the:

- (A) initial registration statements;
- (B) annual reports;
- (C) amendments;
- (D) termination reports; and
- (E) other documents;

required to be filed under this article; and

(2) make the forms available to persons required to file those forms.

(b) In cooperation with the inspector general, the commissioner shall:

- (1) adopt a form for the statement to be filed under 25 IAC 6-2-2(b); and
- (2) include such form in materials made available to persons required to file a registration statement.

(c) The commissioner shall:

- (1) prepare and publish instructions setting forth recommended, uniform methods of reporting for use by persons required to file statements and reports under this article;
- (2) make such instructions available on the department's Web site; and
- (3) implement a process for answering any questions and providing any necessary guidance regarding the application of the instructions to these rules.

(d) The commissioner shall be responsible for notifying executive branch lobbyists of deficiencies, inadequacies, and delinquencies in registration statements, reports, and other documents filed or to be filed with the department pursuant to this article.

(e) The commissioner shall compile and maintain an index of all reports and statements filed with the department under this article to facilitate public access to these reports and statements.

(f) The commissioner may audit the accuracy of registration statements or other documents filed under this article by requiring the executive branch lobbyist to submit verified statements and other supporting documentation. Disclosure of such documents shall be subject to IC 5-14-3 and the exceptions and exemptions contained therein.

(g) The commissioner shall notify an executive branch lobbyist of any violations or errors discovered during an audit. The executive branch lobbyist shall within thirty (30) days from receipt of the notification file an amended statement meeting all requirements set forth in this article.

If no amended statement is filed within thirty (30) days of receipt of the notification, or if an amended statement does not adequately address the deficiencies discovered during the audit, the commissioner may:

- (1) refer the file to the office of the inspector general; and
- (2) deem the executive branch lobbyist unregistered until an appropriate amendment is filed.

(h) The department shall preserve statements and reports filed under this article for a period of four (4) years from the date of receipt. *(Indiana Department of Administration; 25 IAC 6-3-1; filed Dec 2, 2005, 2:00 p.m.: 29 IR 1204)*

Rule 4. Prohibitions

25 IAC 6-4-1 Persons barred from executive branch lobbying

Authority: IC 4-13-1-4.2
Affected: IC 4-13-1-4.2

Sec. 1. The following persons may not be registered as an executive branch lobbyist and are prohibited from engaging in executive agency lobbying under this article:

- (1) Any individual convicted of a felony for violating any law while the individual was an officer or employee of any agency or political subdivision.
- (2) Any person convicted of a felony relating to executive branch lobbying.
- (3) Any person convicted of a felony who:
 - (A) is in prison;
 - (B) is on probation; or
 - (C) has been in prison or on probation within the past twelve (12) months.
- (4) Any person:
 - (A) whose statement or report required to be filed under this article was found to be materially incorrect; and
 - (B) who has not filed an amended statement or report within thirty (30) days after having been notified to do so by the department.

(Indiana Department of Administration; 25 IAC 6-4-1; filed Dec 2, 2005, 2:00 p.m.: 29 IR 1205)

Rule 5. Enforcement

25 IAC 6-5-1 Enforcement

Authority: IC 4-13-1-4.2
Affected: IC 4-13-1-4.2

Sec. 1. (a) The commissioner shall take all steps allowed by applicable law to enforce this article.

(b) The office of the inspector general shall receive complaints concerning unlawful executive branch lobbying activity, violations of the executive branch lobbying rules, or violations of state ethics rules committed by executive branch lobbyists.

(c) Complaints alleging unlawful executive branch

lobbying activity, violations of the executive branch lobbying rules, or violations of state ethics rules may be filed with the office of the inspector general by:

- (1) the department;
- (2) any appointing authority of an agency; or
- (3) any person.

(Indiana Department of Administration; 25 IAC 6-5-1; filed Dec 2, 2005, 2:00 p.m.: 29 IR 1205)

Rule 6. Severability

25 IAC 6-6-1 Severability

Authority: IC 4-13-1-4.2
Affected: IC 4-13-1-4.2

Sec. 1. If any provision of this article as now or later amended, or its application to any person or circumstance, is held invalid, the invalidity shall not affect other provisions that can be given effect without the invalid provision or application. *(Indiana Department of Administration; 25 IAC 6-6-1; filed Dec 2, 2005, 2:00 p.m.: 29 IR 1205)*

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TITLE 42 OFFICE OF THE INSPECTOR GENERAL

LSA Document #05-124(F)

DIGEST

Adds 42 IAC to establish the Indiana code of ethics. Effective 30 days after filing with the Secretary of State.

42 IAC

SECTION 1. 42 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 42 OFFICE OF THE INSPECTOR GENERAL

ARTICLE 1. INDIANA CODE OF ETHICS

Rule 1. Name of Article

42 IAC 1-1-1 Name of article

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6

Sec. 1. The name of this article shall be the Indiana code

of ethics. (*Office of the Inspector General; 42 IAC 1-1-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1205*)

Rule 2. Purpose

42 IAC 1-2-1 Purpose

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 1. (a) This section:

- (1) is intended as a guide to those under the jurisdiction of the state ethics commission;
- (2) is not a basis for sanctions by the state ethics commission;
- (3) is aspirational in character; and
- (4) represents the objective toward which every public servant should strive.

42 IAC 1-3 through 42 IAC 1-5 are mandatory in character and state minimum levels of conduct below which those under the jurisdiction of the state ethics commission may not fall without being subject to sanctions by the state ethics commission.

(b) The purpose of this article is to set ethical standards for:

- (1) the official conduct of the current and former officers, employees, and special state appointees of the executive and administrative branches of state government; and
- (2) persons who have or had a business relationship with an agency;

so that the general public will have confidence that the conduct of state business is always conducive to the public good. This article promotes the principle that public office is a public trust where government is based upon the consent of its citizens who are entitled to have complete confidence in the integrity of their government. Thus, the business of the state will be conducted in such a manner as to reassure the citizens of Indiana that the character and conduct of its officials, employees, and special state appointees are above reproach.

(c) Public confidence in the integrity of government is essential to the exercise of good government. Accordingly, those persons under the jurisdiction of the state ethics commission should be committed to the following goals:

- (1) Duties should be carried out impartially.
- (2) Decisions and policy should not be made outside of proper channels of state government.
- (3) Public office should not be used for private gain.
- (4) Actions, transactions, or involvements should not be performed or engaged in which have the potential to become a conflict of interest.

(d) This article is not meant to unduly restrict or limit the behavior of the officers, employees, and special state appointees of this state during the time when they are not on duty. Each state officer, employee, and special state ap-

pointee retains lawful rights and privileges as a private citizen to interests of a personal or private financial nature. These rights and privileges will be honored by the commission to the extent that they are compatible with an individual's public office or employment. (*Office of the Inspector General; 42 IAC 1-2-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1206*)

Rule 3. Definitions

42 IAC 1-3-1 Applicability

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-6-2.5; IC 4-13-1-4

Sec. 1. The definitions in IC 4-2-6-1 and this rule apply throughout this article. (*Office of the Inspector General; 42 IAC 1-3-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1206*)

42 IAC 1-3-2 "Agency" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1

Sec. 2. "Agency" has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-2; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1206*)

42 IAC 1-3-3 "Appointing authority" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 3. "Appointing authority" has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-3; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1206*)

42 IAC 1-3-4 "Assist" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 4. "Assist" has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-4; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1206*)

42 IAC 1-3-5 "Business relationship" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 5. "Business relationship" has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-5; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1206*)

42 IAC 1-3-6 "Commission" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 6. "Commission" has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-6; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1206*)

42 IAC 1-3-7 "Compensation" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 7. “Compensation” has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-7; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1206*)

42 IAC 1-3-8 “Employee” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1

Sec. 8. “Employee” has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-8; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-9 “Employer” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 9. “Employer” has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-9; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-10 “Ethics” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-2.5

Sec. 10. “Ethics” means the standards of official conduct for those persons listed in IC 4-2-6-2.5. (*Office of the Inspector General; 42 IAC 1-3-10; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-11 “Financial interest” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 11. “Financial interest” has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-11; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-12 “Honorarium” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 12. “Honorarium” means a payment of money for:
(1) an appearance;
(2) a speech; or
(3) an article;
but does not include payment or reimbursement of travel expenses for a state employee. (*Office of the Inspector General; 42 IAC 1-3-12; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-13 “Immediate family” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-9

Sec. 13. “Immediate family” means a person’s:
(1) spouse;
(2) partner;
(3) housemate; or
(4) unemancipated dependent.

(*Office of the Inspector General; 42 IAC 1-3-13; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-14 “Information of a confidential nature” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 14. “Information of a confidential nature” has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-14; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-15 “Inspector general” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7-2

Sec. 15. “Inspector general” means the office of the inspector general as established by IC 4-2-7-2. (*Office of the Inspector General; 42 IAC 1-3-15; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-16 “Person” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 16. “Person” has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-16; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-17 “Political subdivision” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 17. “Political subdivision” has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-17; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-18 “Property” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 18. “Property” has the meaning set forth in IC 4-2-6-1. (*Office of the Inspector General; 42 IAC 1-3-18; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-19 “Public official” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 19. “Public official” means anyone who holds a public office, elected or appointed, at the federal, state, county, or local level. (*Office of the Inspector General; 42 IAC 1-3-19; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207*)

42 IAC 1-3-20 “Relative” defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-15-7-1

Sec. 20. “Relative” means any person related as:

- (1) father;
- (2) mother;
- (3) stepfather;
- (4) stepmother;
- (5) brother;
- (6) sister;
- (7) stepbrother;
- (8) stepsister;
- (9) uncle;
- (10) aunt;
- (11) husband;
- (12) wife;
- (13) son;
- (14) daughter;
- (15) stepchild;
- (16) son-in-law;
- (17) daughter-in-law;
- (18) grandchild;
- (19) stepgrandchild;
- (20) niece; or
- (21) nephew.

(Office of the Inspector General; 42 IAC 1-3-20; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1207)

42 IAC 1-3-21 "Represent" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 21. "Represent" has the meaning set forth in IC 4-2-6-1. (Office of the Inspector General; 42 IAC 1-3-21; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1208)

42 IAC 1-3-22 "Special state appointee" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 22. "Special state appointee" has the meaning set forth in IC 4-2-6-1. (Office of the Inspector General; 42 IAC 1-3-22; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1208)

42 IAC 1-3-23 "State officer" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-1; IC 4-2-7

Sec. 23. "State officer" has the meaning set forth in IC 4-2-6-1. (Office of the Inspector General; 42 IAC 1-3-23; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1208)

42 IAC 1-3-24 "Travel expenses" defined

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-13-1-4

Sec. 24. "Travel expenses" means transportation, lodging, and meals. The term includes actual travel expenses or an amount approximating those expenses that would be allowed by state travel policies and procedures authorized under IC 4-13-1-4(7). (Office of the Inspector General; 42 IAC 1-3-24; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1208)

Rule 4. Ethics Education

42 IAC 1-4-1 Training requirements

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7-1

Sec. 1. (a) All state officers, employees, and special state appointees shall be properly trained in the code of ethics as described in this article. All persons who have a business relationship with a state agency are obligated to abide by the code of ethics.

(b) Each agency's appointing authority shall do the following:

- (1) Require all new employees and special state appointees to participate in ethics training within six (6) weeks of the employee's starting employment and the special state appointee's appointment date with the agency.
- (2) Require all employees and special state appointees to participate in ethics training at least every two (2) years during an employee's and special state appointee's tenure with the agency.
- (3) Maintain documentation to demonstrate an employee's and special state appointee's compliance with subdivisions (1) and (2).

(Office of the Inspector General; 42 IAC 1-4-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1208)

Rule 5. Ethics Rules

42 IAC 1-5-1 Gifts; travel expenses; waivers

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 3-9-2; IC 4-2-6

Sec. 1. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

from a person who has a business relationship with the employee's or special state appointee's agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

(b) The following shall not be subject to this rule:

- (1) Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or public institutions.
- (2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value.

(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.

(5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:

(A) the gifts or other items of value are not deducted as a business expense; and

(B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:

(A) has a business relationship; or

(B) seeks to influence official action;

with the employee's or special state appointee's agency.

(8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.

(c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:

(1) be in writing; and

(2) identify the following:

(A) The employee or special state appointee.

(B) The nature and value of the gift.

(C) The donor of the gift.

(D) Why acceptance of the gift is consistent with the public interest.

(d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee, or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund. (*Office of the Inspector General; 42 IAC 1-5-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1208*)

42 IAC 1-5-2 Donor restrictions

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7-3

Sec. 2. A person who has a business relationship with an employee's or a special state appointee's agency shall not provide any:

(1) gifts;

(2) favors;

(3) services;

(4) entertainment;

(5) food;

(6) drink;

(7) travel expenses; or

(8) registration fees;

to such employee or special state appointee if the employee or special state appointee would not be permitted to accept the gift, favor, service, entertainment, food, drink, travel expenses, or registration fees under this rule. (*Office of the Inspector General; 42 IAC 1-5-2; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1209*)

42 IAC 1-5-3 Honoraria

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 3. An employee shall not personally accept an honorarium for any activity that may be considered part of the state employee's official duties. However, a state employee may accept an honorarium on behalf of the state. The employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund. An employee may personally accept an honorarium for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources. However, in no case may an employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency. (*Office of the Inspector General; 42 IAC 1-5-3; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1209*)

42 IAC 1-5-4 Political activity

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 3-9-2; IC 4-2-6-1

Sec. 4. (a) A state employee or special state appointee shall not engage in political activity including solicitation of

political contributions from:

- (1) another employee or special state appointee; or
- (2) any other person;

when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee or special state appointee from engaging in such activity when not on duty.

(c) A state employee or special state appointee shall not solicit political contributions at any time from:

- (1) persons whom the employee or special state appointee knows to have a business relationship with the employee's or the special state appointee's agency; or
- (2) state employees or special state appointees directly supervised by the employee or the special state appointee.

(d) The appointing authority of an agency and all employees or special state appointees with purchasing or procurement authority on behalf of the state shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself. (*Office of the Inspector General*; 42 IAC 1-5-4; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1209)

42 IAC 1-5-5 Moonlighting

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-5.5; IC 4-2-7

Sec. 5. Outside employment restrictions are set forth in IC 4-2-6-5.5. (*Office of the Inspector General*; 42 IAC 1-5-5; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210)

42 IAC 1-5-6 Conflicts of interest; decisions and voting

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9. (*Office of the Inspector General*; 42 IAC 1-5-6; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210)

42 IAC 1-5-7 Conflicts of interest; contracts

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-10.5; IC 4-2-7

Sec. 7. Contracting restrictions are set forth in IC 4-2-6-10.5. (*Office of the Inspector General*; 42 IAC 1-5-7; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210)

42 IAC 1-5-8 Additional compensation

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 8. A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law. (*Office of the Inspector General*; 42 IAC 1-5-8; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210)

42 IAC 1-5-9 Bribery

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 9. A state officer, employee, or special state appointee shall not pay or offer to pay any compensation for the performance of a state officer's, employee's, or special state appointee's official duties except as permitted by law. (*Office of the Inspector General*; 42 IAC 1-5-9; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210)

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law. (*Office of the Inspector General*; 42 IAC 1-5-10; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210)

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law. (*Office of the Inspector General*; 42 IAC 1-5-11; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210)

42 IAC 1-5-12 Use of state property

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 12. A state officer, employee, or special state appointee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation. (*Office of the Inspector General*; 42 IAC 1-5-12; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210)

42 IAC 1-5-13 Ghost employment

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation. (*Office of the Inspector General*; 42 IAC 1-5-13; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210)

42 IAC 1-5-14 Postemployment restrictions

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-11; IC 4-2-7

Sec. 14. Postemployment restrictions are set forth in IC 4-2-6-11. (*Office of the Inspector General; 42 IAC 1-5-14; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210*)

42 IAC 1-5-15 Nepotism

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7; IC 4-15-7-1

Sec. 15. Nepotism restrictions are set forth in IC 4-15-7-1. (*Office of the Inspector General; 42 IAC 1-5-15; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1211*)

Rule 6. Other Sources

42 IAC 1-6-1 Other sources

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-4

Sec. 1. An appointing authority of an agency or a state officer may adopt policies, rules, or regulations concerning the subject matter of this rule provided that the policies, rules, or regulations are at least as strict as this rule. All such policies, rules, or regulations shall be filed with the commission, but failure to file does not affect the validity of such policies, rules, or regulations as applied to the agency's or state officer's employees or special state appointees. (*Office of the Inspector General; 42 IAC 1-6-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1211*)

42 IAC 1-6-2 Complaint restrictions

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 2. A complaint for an ethics violation may be filed only for violations in 42 IAC 1-4 and 42 IAC 1-5. (*Office of the Inspector General; 42 IAC 1-6-2; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1211*)

Rule 7. Advisory Opinions

42 IAC 1-7-1 Procedures

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6-2.5; IC 4-2-7

Sec. 1. Provisions for advisory opinions by the commission are set forth in 40 IAC 2-2. (*Office of the Inspector General; 42 IAC 1-7-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1211*)

Rule 8. Informal Advisory Opinions

42 IAC 1-8-1 Procedures

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 5-14-3-4

Sec. 1. (a) The inspector general or the inspector general's designee shall have the authority to render informal advisory opinions. Informal advisory opinions are not binding on the commission. If the commission determines that a person committed a violation after relying on the informal

advisory opinion and the violation is directly related to the advice rendered, the commission may consider that the person acted in good faith.

(b) Informal advisory opinions are expressions of opinion that are communicated for the purpose of deliberation and decision making. The information and advice contained in an informal advisory opinion:

- (1) are specific to the person who requests the opinion and the facts presented; and**
- (2) shall be considered to be confidential under IC 5-14-3-4(b)(6).**

(*Office of the Inspector General; 42 IAC 1-8-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1211*)

Rule 9. Adjudication Proceedings

42 IAC 1-9-1 Applicable statutes and rules

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-6; IC 4-21.5; IC 5-14-1.5

Sec. 1. Provisions for adjudication proceedings before the commission are set forth in 40 IAC 2-3. (*Office of the Inspector General; 42 IAC 1-9-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1211*)

Rule 10. General Procedures

42 IAC 1-10-1 General procedures

Authority: IC 4-2-5-7
Affected: IC 5-14-1.5

Sec. 1. Provisions for general procedures of the commission are set forth in 40 IAC 2-5. (*Office of the Inspector General; 42 IAC 1-10-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1211*)

Rule 11. Severability

42 IAC 1-11-1 Severability

Authority: IC 4-2-7-3; IC 4-2-7-5
Affected: IC 4-2-7

Sec. 1. If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application. (*Office of the Inspector General; 42 IAC 1-11-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1211*)

LSA Document #05-124(F)

Notice of Intent Published: June 1, 2005; 28 IR 2754

Proposed Rule Published: September 1, 2005; 28 IR 3615

Hearing Held: September 22, 2005

Approved by Attorney General: December 1, 2005

Approved by Governor: December 2, 2005

Filed with Secretary of State: December 7, 2005, 2:45 p.m.

IC 4-22-7-5(c) Notice from Secretary of State Regarding

Documents Incorporated by Reference: None Received by Publisher

**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

LSA Document #05-76(F)

DIGEST

Amends 405 IAC 5-24-4 to revise the Medicaid reimbursement methodology for payment of legend drugs. Amends 405 IAC 5-24-5 to amend the Medicaid reimbursement methodology for insulin. Makes other nonsubstantive changes. Effective 30 days after filing with the Secretary of State.

405 IAC 5-24-4

405 IAC 5-24-5

SECTION 1. 405 IAC 5-24-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-24-4 Reimbursement for legend drugs

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 4. (a) The office shall reimburse pharmacy providers for covered legend drugs at the lowest of the following:

- (1) The estimated acquisition cost (EAC) of the drug as of the date of dispensing, plus any applicable Medicaid dispensing fee.
- (2) The maximum allowable cost (MAC) of the drug as determined by the Health Care Financing Administration under 42 CFR 447.332 as of the date of dispensing, plus any applicable Medicaid dispensing fee.
- (3) The state maximum allowable cost (MAC) of the drug as determined by the office as of the date of dispensing, plus any applicable Medicaid dispensing fee.
- (4) The provider's submitted charge, representing the provider's usual and customary charge for the drug, as of the date of dispensing.

(b) For purposes of this section **and section 5(c) of this rule**, the Indiana Medicaid EAC is:

- (1) for brand name drugs, ~~eighty-six and one-half percent (86.5%)~~ **eighty-four percent (84%)**; or
 - (2) for generic drugs, eighty percent (80%);
- of the average wholesale price for each National Drug Code according to the Medicaid contractor's drug database file.

(c) The state MAC is equal to the average actual acquisition cost per drug adjusted by a multiplier of at least 1.0. The actual acquisition cost will be determined using pharmacy invoices and other information that the office determines is necessary. The purpose of the multiplier is to ensure that the applicable state MAC rate is sufficient to allow reasonable access by providers

to the drug at or below the established state MAC rate.

(d) OMPP will review state MAC rates on an ongoing basis and adjust the rates as necessary to reflect prevailing market conditions and ensure reasonable access by providers to drugs at or below the applicable state MAC rate.

(e) Pharmacies and providers that are enrolled in ~~the Indiana Health Coverage Programs (HICP)~~ **Medicaid** are required, as a condition of participation, to make available and submit to the ~~OMPP office~~ or its designee acquisition cost information, product availability information, or other information deemed necessary by the ~~OMPP office~~ for the efficient operation of the pharmacy benefit ~~within the HICP~~ in the format requested by the ~~OMPP office~~ or its designee. Providers will not be reimbursed for this information and will submit information to the ~~OMPP office~~ or its designee within thirty (30) days following a request for such information unless the ~~OMPP office~~ or its designee grants an extension upon written request of the pharmacy or provider. (*Office of the Secretary of Family and Social Services; 405 IAC 5-24-4; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3345; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 29, 2001, 9:50 a.m.: 25 IR 60 [NOTE: On October 9, 2001, the Marion Superior Court issued an Order in Cause No. 49D05-0109-CP-1480, enjoining the Family and Social Services Administration from implementing LSA Document #01-22(F), published at 25 IR 60.]; filed Apr 30, 2002, 10:59 a.m.: 25 IR 2727; errata filed Aug 22, 2002, 3:11 p.m.: 26 IR 35; filed Nov 23, 2005, 11:30 a.m.: 29 IR 1212*)

SECTION 2. 405 IAC 5-24-5 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-24-5 Reimbursement for nonlegend drugs

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 5. (a) The office shall reimburse pharmacy providers for the cost and dispensation of nonlegend (over-the-counter) drugs included on the Medicaid nonlegend drug formulary as provided for in this section.

(b) The office shall reimburse for nonlegend drugs, **except insulin**, at the lowest of the following rates:

- (1) One hundred fifty percent (150%) of the state maximum allowable cost, as set out in the Medicaid Pharmacy Provider Manual and amendments thereto, for the drug in the quantity dispensed, as of the date dispensed.
- (2) The provider's submitted charge, representing the provider's usual and customary charge for the drug, as of the date of dispensing.

(c) The office shall reimburse for insulin at the estimated acquisition cost (EAC) of the drug, plus any applicable Medicaid dispensing fee. For purposes of this subsection, EAC is defined in section 4(b) of this rule. (*Office of the Secretary of Family and Social Services; 405 IAC 5-24-5; filed*

Jul 25, 1997, 4:00 p.m.: 20 IR 3345; filed Sep 27, 1999, 8:55 a.m.: 23 IR 319; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Nov 23, 2005, 11:30 a.m.: 29 IR 1212)

LSA Document #05-76(F)

Notice of Intent Published: May 1, 2005; 28 IR 2407

Proposed Rule Published: September 1, 2005; 28 IR 3652

Hearing Held: September 22, 2005

Approved by Attorney General: November 21, 2005

Approved by Governor: November 23, 2005

Filed with Secretary of State: November 23, 2005, 11:30 a.m.

IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

LSA Document #05-155(F)

DIGEST

Amends 407 IAC 2-2-3 to eliminate the two-year time limit on the collection of past due premiums. Effective 30 days after filing with the Secretary of State.

407 IAC 2-2-3

SECTION 1. 407 IAC 2-2-3 IS AMENDED TO READ AS FOLLOWS:

407 IAC 2-2-3 Agreement to pay cost sharing

Authority: IC 12-17.6-2-11

Affected: IC 12-17.6-3-2

Sec. 3. (a) As a condition of eligibility for CHIP, at least one (1) of the following individuals must agree to pay the cost-sharing required by the office under this title:

- (1) The parent, guardian, or caretaker of an applicant.
- (2) The applicant, if the applicant is either:
 - (A) eighteen (18) years of age and not living with a parent, guardian, or caretaker; or
 - (B) married and living with his or her spouse.

(b) If the individual who agrees to pay cost-sharing for an applicant under this section has failed to pay the required premiums due for any member at any time, ~~within the two (2) years preceding the date of application~~, the individual must pay all premiums due ~~within the past two (2) years~~ before an applicant for whom that individual has cost-sharing responsibility may enroll in the program. An applicant living with an individual who has not failed to pay any past due premiums may be enrolled even though his or her prior parent, guardian, or caretaker failed to pay. (*Office of the Children's Health Insurance Program; 407 IAC 2-2-3; filed May 3, 2000, 2:02 p.m.: 23 IR 2232; errata filed Aug 2, 2000, 3:21 p.m.: 23 IR 3091; filed*

Nov 23, 2005, 11:30 a.m.: 29 IR 1213)

LSA Document #05-155(F)

Notice of Intent Published: July 1, 2005; 28 IR 2997

Proposed Rule Published: September 1, 2005; 28 IR 3656

Hearing Held: September 27, 2005

Approved by Attorney General: November 15, 2005

Approved by Governor: November 23, 2005

Filed with Secretary of State: November 23, 2005, 11:30 a.m.

IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: Ann Alley, Director, Office of the Children's Health Insurance Program, Indiana Government Center-South, 402 W. Washington Street, Room W382, Indianapolis, IN 46204, (317) 232-4390, ann.alley@fssa.in.gov

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

LSA Document #05-156(F)

DIGEST

Amends 407 IAC 2-3-1 to increase the monthly premium amount an individual's family must pay to receive benefits under the program. Effective 30 days after filing with the Secretary of State.

407 IAC 2-3-1

SECTION 1. 407 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

407 IAC 2-3-1 Responsibility for premium payment

Authority: IC 12-17.6-2-11

Affected: IC 12-17.6-3-2; IC 12-17.6-4-3

Sec. 1. (a) In order for an individual to receive benefits under CHIP, the individual's family must pay monthly premiums as described below:

Income (as a percentage of federal poverty level)	One child enrolled	Two or more children enrolled
over 150% to 175%	\$11.00 \$22	\$16.50 \$33
over 175% to 200%	\$16.50 \$33	\$24.75 \$50

For purposes of this section, the family's income includes the income considered in 407 IAC 2-2-2.

(b) Premiums must be paid monthly. Partial month payments will not be accepted. (*Office of the Children's Health Insurance Program; 407 IAC 2-3-1; filed May 3, 2000, 2:02 p.m.: 23 IR 2233; filed Aug 7, 2002, 9:41 a.m.: 25 IR 4103; errata filed Sep 26, 2002, 11:42 a.m.: 26 IR 383; filed Nov 23, 2005, 11:30 a.m.: 29 IR 1213)*

LSA Document #05-156(F)

Notice of Intent Published: July 1, 2005; 28 IR 2997

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IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: Ann Alley, Director, Office of the Children's Health Insurance Program, Indiana Government Center-South, 402 W. Washington Street, Room W382, Indianapolis, IN 46204, (317) 232-4390, ann.alley@fssa.in.gov

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #04-290(F)

DIGEST

Amends 872 IAC 1-2-1 to address the ethical requirements for licensees by incorporating by reference the July 1, 2004, pronouncements on professional standards of the American Institute of Certified Public Accountants (to apply to certified public accountants) and the May 1, 2003, Rules of Professional Conduct of the National Society of Accountants (to apply to accounting practitioners and public accountants). Effective January 1, 2006.

872 IAC 1-2-1

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

872 IAC 1-2-1 Rules of professional conduct; applicability

Authority: IC 25-2.1-2-15

Affected: IC 4-22-2; IC 23-1.5; IC 25-1-11-12; IC 25-2.1

Sec. 1. (a) In the interpretation and enforcement of this rule, the board will give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings, and opinions issued by the **following**:

- (1) Boards of other jurisdictions. ~~and by~~
- (2) Appropriately authorized committees on ethics of professional organizations.

(b) No licensee of the board shall violate the following standards for the competent practice of accounting appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accountancy, which are incorporated by reference as if fully set out in this rule:

- (1) The following pronouncements on professional standards set forth in the AICPA Professional Standards, Volumes 1 and

2 (June 1, ~~1999~~, **2004**), subject to the exceptions listed in subsection (c) (applicable to certified public accountants only):

~~(A) Code of Professional Conduct.~~

(A) U.S. Auditing - AICPA, including the following:

(i) Statement on Auditing Standards - Introduction.

(ii) The General Standards.

(iii) The Standards of Field Work.

(iv) The First, Second, and Third Standards of Reporting.

(v) The Fourth Standard of Reporting.

(vi) Other Types of Reports.

(vii) Special Topics.

(viii) Compliance Auditing.

(ix) Special Reports of the Committee on Auditing Procedure.

(B) Statements on Auditing Standards for Attestation Engagements.

(C) Statements on Standards for Attestation Engagements: Accounting and Review Services.

~~(D) Statements on Standards for Accounting and Review Services.~~

(D) Code of Professional Conduct.

(E) Statement on Standards for Consulting Services.

(F) Tax Services.

(G) Personal Financial Planning.

(2) Professional corporation act at IC 23-1.5.

(3) National Society of Accountants (NSA) Rules of Professional Conduct ~~1998~~, **and Official Interpretations, May 2003**, excluding the interpretations and Rule ~~12 9~~ **(professional referrals)** (applicable to accounting practitioners and public accountants only).

(c) As incorporated by reference in subsection (b)(1), the AICPA professional standards ~~is~~ **are** amended to read as follows:

(1) ET 50 (Principles of Professional Conduct – **Sections 51 through 57**) is deleted.

(2) The third paragraph of Rule 505 (Form of Organization and Name) is deleted.

(3) The phrase "standards promulgated by bodies designated by Council", or any similar reference, shall mean the standards incorporated by reference in subsection (b)(1).

(d) Notwithstanding the use of the word "should" in the AICPA pronouncements incorporated by reference in subsection ~~(b)(1)(B)~~ **(b)(1)(A)** through ~~(b)(1)(E)~~, **(b)(1)(G)**, a certified public accountant must:

- (1) comply with the pronouncements; ~~or must~~
- (2) justify any departures therefrom.

(e) It shall be deemed incompetent practice contrary to high standards of integrity and dignity in the profession of certified public accountancy for a licensee of the board to be found by a court of competent jurisdiction to have engaged in accounting

practices falling below professional standards in Indiana.

(f) As used in this rule, "member", as used in the:

(1) AICPA Professional Standards; and ~~the~~

(2) NSA Rules of Professional Conduct **and Official Interpretations**;

means licensee.

(g) Where matters incorporated by reference in this section conflict with express provisions of:

(1) IC 25-2.1 (accountancy act);

(2) IC 23-1.5 (professional corporation act); or

(3) rules adopted by the board;

the express provisions control.

(h) No subsequent editions, amendments, supplements, or releases of the:

(1) AICPA Professional Standards; ~~or the~~

(2) NSA Rules of Professional Standards; ~~or the~~

(3) NSA Rules of Professional Conduct;

will be in effect in Indiana or adopted by the board, except by following the rulemaking provisions of IC 4-22-2.

(i) The standards incorporated by reference in subsection (b) apply to conduct that occurs after ~~January 31, 2001~~. **December 31, 2005**. This subsection shall not be construed to extinguish the board's authority to impose any sanction under IC 25-1-11-12 for conduct that occurred before ~~February 1, 2001~~, **January 1, 2006**, in violation of a previous version of this section.

(j) A copy of the AICPA Professional Standards and the NSA Rules of Professional Conduct are available for public inspection at the offices of the Indiana Professional Licensing Agency, ~~302~~ **402** West Washington Street, Room ~~E034~~, **W072**, Indianapolis, Indiana 46204. Copies of the AICPA Professional Standards are available from the entity originally issuing the document, the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775. Copies of the NSA Rules of Professional Conduct are also available from the entity originally issuing the document, the National Society of Accountants, 1010 North Fairfax Street, Alexandria, Virginia 22314. (*Indiana Board of Accountancy*; Rule 69-1, 39; filed Jun 30, 1978, 9:54 a.m.: 1 IR 402; filed Aug 18, 1983, 3:20 p.m.: 6 IR 1932; filed May 1, 1984, 12:50 p.m.: 7 IR 1544; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1040; filed Aug 28, 1986, 3:20 p.m.: 10 IR 68; filed Dec 11, 1992, 5:00 p.m.: 16 IR 1399; filed Feb 24, 1997, 4:00 p.m.: 20 IR 1736; filed Dec 18, 2000, 9:27 a.m.: 24 IR 1353, eff Feb 1, 2001; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Nov 18, 2005, 9:40 a.m.: 29 IR 1214, eff Jan 1, 2006)

SECTION 2. SECTION 1 of this document takes effect January 1, 2006.

LSA Document #04-290(F)

Notice of Intent Published: December 1, 2004; 28 IR 984

Proposed Rule Published: August 1, 2005; 28 IR 3348

Hearing Held: September 16, 2005

Approved by Attorney General: November 3, 2005

Approved by Governor: November 18, 2005

Filed with Secretary of State: November 18, 2005, 9:40 a.m.

IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: AICPA Professional Standards, Volumes 1 and 2, June 1, 2004; National Society of Accountants, Rules of Professional Conduct and Official Interpretations, May 2003

Notice of Recall

TITLE 42 OFFICE OF THE INSPECTOR GENERAL

LSA Document #05-124

Under IC 4-22-2-40, LSA Document #05-124, printed at 28 IR 3615, is recalled.

**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

LSA Document #05-114

Under IC 4-22-2-40, LSA Document #05-114, printed at 28 IR 3655, is recalled.

**TITLE 655 BOARD OF FIREFIGHTING
PERSONNEL STANDARDS AND EDUCATION**

LSA Document #05-103

LSA Document #05-103, printed at 28 IR 2758, is withdrawn.

Emergency Rules

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-333(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 788. Effective November 16, 2005.

SECTION 1. The name of this scratch-off game is "Scratch-Off Game Number 788, Silver & Gold".

SECTION 2. Scratch-off tickets in scratch-off game number 788 shall sell for two dollar [*sic., dollars*] (\$2) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 788 shall contain nine (9) play symbols and play captions arranged in rows of three (3) on each of two (2) independent games labeled "GAME 1" and "GAME 2". In the area labeled "PRIZE BOX", located below the play symbols and play captions, are two (2) prize symbols and play captions for "GAME 1" and "GAME 2". All data area concealed under a scratch-off material covering.

(b) The play symbols and play symbol captions in scratch-off game number 788, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) Picture of horseshoe

SHOE

(2) Picture of cherries

CHR

(3) Picture of bell


BEL

(4) Picture of pot of gold

GOLD

(5) Picture of star

STAR

(6) Picture of 

BAR

(7) Picture of 

SEV

(8) Picture of moneybag with \$

BAG

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 788 shall consist of the following possible play symbols and play symbol captions:

(1) \$2.00

TWO

(2) \$4.00

FOUR

(3) \$5.00

FIVE

(4) \$8.00

EIGHT

(5) \$10.00

TEN

(6) \$15.00

FIFTEEN

(7) \$20.00

TWENTY

(8) \$25.00

TWY FIVE

(9) \$50.00

FIFTY

(10) \$100

ONE HUN

(11) \$500

FIVE HUN

(12) \$1,000

ONE THOU

(13) \$20,000

TWY THOU

SECTION 4. The holder of a ticket in scratch-off game number 788 shall remove the scratch-off material covering the eighteen (18) play symbols and play symbol captions. If three (3) play symbols match in any row, column, or diagonal, the holder is entitled to the corresponding prize amount. If the play symbol picture of a money bag is exposed in any row, column, or diagonal within a game, the holder is entitled to the paired prize amount. The matched play symbols, prize amounts, and approximate number of winners in scratch-off game number 788 are as follows:

Number of Matches and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 - \$2	\$2	408,000
2 - \$2 (moneybag)	\$4	244,800
1 - \$4	\$4	81,600
1 - \$5	\$5	61,200
2 - \$4 (moneybag)	\$8	20,400
1 - \$8	\$8	20,400
2 - \$5 (moneybag)	\$10	20,400
1 - \$15	\$15	20,400
2 - \$10 (moneybag)	\$20	10,200
1 - \$20	\$20	10,200
2 - \$25 (moneybag)	\$50	5,100
1 - \$50	\$50	5,100
2 - \$50 (moneybag)	\$100	2,550
1 - \$100	\$100	2,550
1 - \$500	\$500	340
2 - \$500 (moneybag)	\$1,000	170
1 - \$1,000	\$1,000	170
1 - \$20,000	\$20,000	8

SECTION 5. (a) There shall be approximately four million (4,000,000) scratch-off tickets initially available in

scratch-off game number 788.

(b) The odds of winning a prize in scratch-off game number 788 are approximately 1 in 4.47.

(c) All reorders of tickets for scratch-off game number 788 shall have the same:

- (1) prize structure;
 - (2) number of prizes per prize pool of one hundred and 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 788 is November 30, 2006.

SECTION 7. This document shall expire December 30, 2006.

LSA Document #05-333(E)

Filed with Secretary of State: November 16, 2005, 3:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-334(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 784. Effective November 16, 2005.

SECTION 1. The name of this scratch-off game is "Scratch-Off Game Number 784, Bah Humbucks".

SECTION 2. Scratch-off tickets in scratch-off game number 784 shall sell for one dollar (\$1) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 784 shall contain one (1) play symbol representing numbers *[sic.]* shall appear in the area labeled "WINNING NUMBER". Five (5) play symbols and captions and five (5) prize symbols shall appear in the area labeled "YOUR NUMBERS" arranged in pairs representing numbers, a picture of a top hat, and prize amounts. All data area concealed under a scratch-off material covering.

(b) The play symbols and play symbol captions in scratch-off game number 784, 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) Picture of top hat
HAT

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 784 shall consist of the following possible play symbols and play symbol captions:

- (1) \$1.00
ONE
- (2) \$2.00
TWO
- (3) \$3.00
THREE
- (4) \$5.00
FIVE
- (5) \$6.00
SIX
- (6) \$10.00
TEN
- (7) \$20.00
TWENTY
- (8) \$40.00
FORTY
- (9) \$100
ONE HUN
- (10) \$1,000
ONE THOU

SECTION 4. The holder of a ticket in scratch-off game number 784 shall remove the scratch-off material covering the eleven (11) play symbols and play symbol captions. If any of the "YOUR NUMBERS" play symbols and play symbol captions match the "WINNING NUMBER" play symbols and play symbol captions, the holder is entitled to the paired prize amount. If the play symbol picture of a top hat is exposed in "YOUR NUMBERS" area, the holder is entitled to win the prize shown without matching prize amounts in "WINNING NUMBER" area. The matched prize play symbols, prize amounts, and approximate number of winners in scratch-off game number 784 are as follows:

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Number of Matches and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 - \$1	\$1	408,000
1 - \$1 + \$1 (top hat)	\$2	204,000
1 - \$2	\$2	68,000
4 - \$1	\$4	27,200
2 - \$1 + \$2 (top hat)	\$4	54,400
1 - \$2 + 1 - \$3 (top hat)	\$5	20,400
5 - \$1	\$5	6,800
5 - \$2	\$10	6,800
2 - \$2 + 1 - \$6 (top hat)	\$10	27,700
1 - \$10	\$10	6,800
2 - \$5 + 1 - \$10 (top hat)	\$20	10,200
1 - \$20	\$20	3,400
2 - \$10 + 1 - \$20 (top hat)	\$40	4,675
4 - \$10	\$40	765
1 - \$40	\$40	850
5 - \$20	\$100	442
1 - \$100	\$100	442
1 - \$1,000 (top hat)	\$1,000	17
1 - \$1,000	\$1,000	17

SECTION 5. (a) There shall be approximately four million (4,000,000) scratch-off tickets initially available in scratch-off game number 784.

(b) The odds of winning a prize in scratch-off game number 784 are approximately 1 in 4.80.

(c) All reorders of tickets for scratch-off game number 784 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 784 is November 30, 2006.

SECTION 7. This document shall expire December 30, 2006.

LSA Document #05-334(E)

Filed with Secretary of State: November 16, 2005, 3:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-335(E)

DIGEST

Temporarily adds rules concerning scratch-off game number

786. Effective November 16, 2005.

SECTION 1. The name of this scratch-off game is "Scratch-Off Game Number 786, Holiday Cash".

SECTION 2. Scratch-off tickets in scratch-off game number 786 shall sell for two dollar [*sic.*, dollars] (\$2) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off game number 786 shall contain two (2) play symbols representing numbers [*sic.*] shall appear in the area labeled "WINNING NUMBERS". Ten (10) play symbols and captions and ten (10) prize symbols shall appear in the area labeled "YOUR NUMBERS" arranged in pairs representing numbers, a picture of a wreath, symbol of "CASH", and prize amounts. All data area concealed under a scratch-off material covering.

(b) The play symbols and play symbol captions in scratch-off game number 786, 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) A picture of a wreath
WIN
- (14) Picture of "CASH"
WIN 10X

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 786 shall consist of the following possible play symbols and play symbol captions:

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- (1) \$1.00
ONE
- (2) \$2.00
TWO
- (3) \$4.00
FOUR
- (4) \$5.00
FIVE
- (5) \$10.00
TEN
- (6) \$20.00
TWENTY
- (7) \$25.00
TWY FIVE
- (8) \$50.00
FIFTY
- (9) \$100
ONE HUN
- (10) \$250
TWO HUN FTY
- (11) \$500
FIV HUN
- (12) \$1,000
ONE THOU
- (13) \$10,000
TEN THOU

SECTION 4. The holder of a ticket in scratch-off game number 786 shall remove the scratch-off material covering the twelve (12) play symbols and play symbol captions. If any of the "YOUR NUMBERS" play symbols and play symbol captions match the "WINNING NUMBER" play symbols and play symbol captions, the holder is entitled to the paired prize amount. If the play symbol picture of a wreath is exposed in "YOUR NUMBERS" area, the holder is entitled to win the prize shown without matching play symbols and play symbol captions in the "WINNING NUMBER" area. If the play symbol picture of "CASH" is exposed, the holder is entitled to win all ten (10) prizes. The matched play symbols, prize amounts, and approximate number of winners in scratch-off game number 786 are as follows:

Number of Matches and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 - \$2	\$2	276,000
1 - \$4	\$4	220,800
1 - \$1 + 1 - \$4	\$5	27,600
1 - \$5	\$5	27,600
5 - \$2	\$10	13,800
2 - \$5	\$10	13,800
10 - \$1 (CASH)	\$10	6,900
1 - \$10	\$10	6,900
4 - \$5	\$20	6,900
10 - \$2 (CASH)	\$20	3,450

1 - \$20	\$20	3,450
5 - \$10	\$50	2,300
2 - \$25	\$50	2,300
1 - \$50	\$50	2,300
10 - \$10 (CASH)	\$100	1,150
5 - \$10 + 2 - \$25	\$100	1,150
1 - \$100	\$100	1,150
2 - \$250	\$500	345
1 - \$500	\$500	345
10 - \$100 (CASH)	\$1,000	46
1 - \$1,000	\$1,000	46
10 - \$1,000 (CASH)	\$10,000	4
1 - \$10,000	\$10,000	4

SECTION 5. (a) There shall be approximately two million seven hundred and sixty thousand (2,760,000) scratch-off tickets initially available in scratch-off game number 786.

(b) The odds of winning a prize in scratch-off game number 786 are approximately 1 in 4.46.

(c) All reorders of tickets for scratch-off game number 786 shall have the same:

- (1) prize structure;
- (2) number of prizes per prize pool of one hundred and 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 786 is November 30, 2006.

SECTION 7. This document shall expire December 30, 2006.

LSA Document #05-335(E)

Filed with Secretary of State: November 16, 2005, 3:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-336(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 785. Effective November 16, 2005.

SECTION 1. The name of this scratch-off game is "Scratch-Off Game Number 785, Candy Cane Cash".

SECTION 2. Scratch-off tickets in scratch-off game number 785 shall sell for one dollar (\$1) per ticket.

SECTION 3. (a) Each scratch-off ticket in scratch-off

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game number 785 shall contain nine (9) play symbols and play symbol captions all concealed under a scratch-off material covering.

(b) The play symbols and play symbol captions representing prize amounts in scratch-off game number 785 shall consist of the following possible play symbols and play symbol captions:

- (1) \$1.00
ONE
- (2) \$2.00
TWO
- (3) \$4.00
FOUR
- (4) \$5.00
FIVE
- (5) \$10.00
TEN
- (6) \$20.00
TWENTY
- (7) \$40.00
FORTY
- (8) \$100
ONE HUN
- (9) \$500
FIVE HUN

SECTION 4. The holder of a ticket in scratch-off game number 785 shall remove the scratch-off material covering the nine (9) play symbols and play symbol captions. If three (3) play symbols of the same amounts are exposed in a row, column, or diagonal, the holder is entitled to the prize amount. The matched prize play symbols, prize amounts, and approximate number of winners in scratch-off game number 785 are as follows:

Number of Matches and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 - \$1	\$1	408,000
1 - \$2	\$2	272,000
1 - \$4	\$4	81,600
1 - \$5	\$5	27,200
1 - \$10	\$10	40,800
1 - \$20	\$20	13,600
1 - \$40	\$40	4,080
1 - \$100	\$100	1,700
1 - \$500	\$500	136

SECTION 5. (a) There shall be approximately four million (4,000,000) scratch-off tickets initially available in scratch-off game number 785.

(b) The odds of winning a prize in scratch-off game number 785 are approximately 1 in 4.80.

(c) All reorders of tickets for scratch-off game number 785 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 785 is November 30, 2006.

SECTION 7. This document shall expire December 30, 2006.

LSA Document #05-336(E)

Filed with Secretary of State: November 16, 2005, 3:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-342(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 066. Effective December 6, 2005.

SECTION 1. The name of the pull-tab game is "Pull-Tab Game Number 066, Just Say Dough".

SECTION 2. Pull-tab tickets in pull-tab game number 066 shall sell for twenty-five cents (\$0.25) per ticket.

SECTION 3. Play symbols: A pull-tab ticket in pull-tab game number 066 shall contain nine (9) play spots arranged in a matrix of three (3) rows and three (3) columns. Each row shall be covered with a tab. The play symbol captions in pull-tab game number 066 shall consist of the following possible play symbols:



SECTION 4. How to win: A prize winner in the "Just Say Dough" pull-tab game number 066 is determined by opening three (3) tabs located on the backside of pull-tab ticket. Match three (3) in a row of the play symbols: money, dollar signs, cash, or coins, which is bisected by a pink arrow, and the player is entitled to the prize amount as it appears in red

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ink on a yellow box located on the left side of the pink line. The prize structure and winning combinations are as follows:

Prize Amount	Win		Estimated No. of Prizes in Game*
3 – Money	\$50	=	4,465
3 – Dollar Sign	\$5	=	8,930
3 – Cash	\$1	=	111,625
3 – Coins	\$0.25	=	428,640

Total value of all prizes*: \$486,685

Prize payout: 64.88%

Overall odds: 1 in 5.42

*The number and total value of prizes in this game are based on a print quantity of approximately three million (3,000,000) tickets. Should the print quantity be changed for production of this game or subsequent reorders, the ratio of prizes and total value of all prizes to print quantity will be proportionately maintained and the overall odds and prize payout percentage will remain the same.

SECTION 5. Applicable rules: Indiana Administrative Code: 65 IAC 4-205 Validation of Tickets.

SECTION 6. The last day to claim prizes in pull-tab game number 066 shall be sixty (60) days after the end of the game.

LSA Document #05-342(E)

Filed with Secretary of State: December 6, 2005, 3:30 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-343(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 065. Effective December 6, 2005.

SECTION 1. The name of the pull-tab game is “Pull-Tab Game Number 065, Cash Blizzard”.

SECTION 2. Pull-tab tickets in pull-tab game number 065 shall sell for fifty cents (\$0.50) per ticket.

SECTION 3. Play symbols: A pull-tab ticket in pull-tab game number 065 shall contain fifteen (15) play spots arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered with a tab. The play symbol captions in pull-tab game number 065 shall consist of the following possible play symbols:



SECTION 4. How to win: A prize winner in the “Cash Blizzard” pull-tab game number 065 is determined by opening five (5) tabs located on the backside of pull-tab ticket. Match three (3) in a row of the play symbols: cash, diamonds, snowflakes, gold bars, igloos, or coins, which is bisected by a pink arrow, and the player is entitled to the prize amount as it appears in red ink on a yellow box located on the left side of the pink line. The prize structure and winning combinations are as follows:

Prize Amount	Win		Estimated No. of Prizes in Game*
3 - Cash	\$125	=	1,786
3 - Diamond	\$15	=	1,786
3 - Snowflake	\$10	=	1,786
3 - Gold Bar	\$3	=	5,358
3 - Igloo	\$1	=	35,720
3 - Coin	\$0.50	=	139,308

Total value of all prizes*: \$389,348

Prize payout: 64.88%

Overall odds: 1 in 6.46

*The number and total value of prizes in this game are based on a print quantity of approximately one million two hundred thousand (1,200,000) tickets. Should the print quantity be changed for production of this game or subsequent reorders, the ratio of prizes and total value of all prizes to print quantity will be proportionately maintained and the overall odds and prize payout percentage will remain the same.

SECTION 5. Applicable rules: Indiana Administrative Code: 65 IAC 4-205 Validation of Tickets.

SECTION 6. The last day to claim prizes in pull-tab game number 065 shall be sixty (60) days after the end of the game.

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LSA Document #05-343(E)

Filed with Secretary of State: December 6, 2005, 3:30 p.m.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #05-337(E)

DIGEST

Temporarily adds rules to implement a program to complement the federal Medicare Prescription Drug Benefit and to establish program eligibility and enrollment guidelines. Effective December 1, 2005.

SECTION 1. (a) Under IC 12-10-16-3, the office of the secretary of family and social services hereby adopts and promulgates this document to phase-out the IPDP discount card program and transition members to the federal Medicare Part D program.

(b) Definitions in this document apply throughout this document unless the context clearly indicates another meaning.

SECTION 2. (a) "Centers for Medicare and Medicaid Services" means the federal administrator of the Medicare prescription drug benefit.

(b) "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.

(c) "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 are not required to pay monthly premiums or annual deductible, have small copayments, and no gap in coverage. Eligibility is determined by the Social Security Administration.

(d) "Low-income subsidy" means either a full low-income subsidy or partial low-income subsidy, as determined by the Social Security Administration.

(e) "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.

(f) "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, determined by Centers for Medicare and Medicaid Services and adjusted annually.

(g) "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.

(h) "Medicare Part D plan" means a Medicare prescription drug plan or a Medicare-Advantage prescription drug plan.

(i) "Member" means a person who has met all eligibility requirements and has been enrolled in the Indiana prescription drug program.

(j) "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 reduced premiums on a sliding-scale, a maximum annual deductible of fifty dollars (\$50), fifteen percent (15%) copayments, and no gap in coverage. Eligibility is determined by the Social Security Administration.

(k) "Premium" means the monthly cost of being enrolled in a Medicare Part D plan.

(l) "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. Does not include enhanced Medicare Part D plans.

SECTION 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.

SECTION 4. (a) The program may, to 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 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 no 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, prior to the end of the thirty (30) calendar day opt-out period.

(g) 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.

SECTION 5. (a) The program may, to 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 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 no 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 prior to 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.

SECTION 6. Under IC 12-10-16-3, the office of the secretary of family and social services hereby adopts and promulgates this document to:

- (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.

SECTION 7. The definitions in this document apply throughout this document unless the context clearly indicates another meaning.

SECTION 8. "Applicant" means the person for whom Indiana prescription drug program enrollment is requested.

SECTION 9. "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

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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 nor 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.

SECTION 10. "Centers for Medicare and Medicaid Services" means the federal administrator of the Medicare prescription drug benefit.

SECTION 11. (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 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 via mail, facsimile, telephone, or over the Internet.

SECTION 12. "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.

SECTION 13. "Domicile" means the applicant's true, fixed, principal, and permanent home.

SECTION 14. "Eligible" means a person who meets all requirements for enrollment in the program.

SECTION 15. "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.

SECTION 16. "Federal poverty limit" means the nonfarm income official poverty guideline as determined by the federal Office of Management and Budget.

SECTION 17. "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. According to CMS, beneficiaries receiving "full low-income subsidy" will not be responsible for monthly premium costs for basic Medicare Part D plans, will have no annual deductible, and no gap in coverage.

SECTION 18. "Income" means the amount of money or its equivalent received in exchange for or as a result of labor or services from the sale of goods or property or as profits from financial investments.

SECTION 19. "Indiana prescription drug program" means the program established by IC 12-10-16.

SECTION 20. "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.

SECTION 21. "Low-income subsidy" means either a full low-income subsidy or partial low-income subsidy, as determined by the Social Security Administration.

SECTION 22. "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.

SECTION 23. "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, determined by Centers for Medicare and Medicaid Services and adjusted annually.

SECTION 24. A definitive determination from the Social Security Administration as to an applicant's eligibility for the low-income subsidy.

SECTION 25. "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.

SECTION 26. "Medicare Part D plan" means a Medicare prescription drug plan or a Medicare-Advantage prescription drug plan.

SECTION 27. "Medicare prescription drug plan" means an entity authorized by the Centers for Medicare and Medicaid Services to provide prescription drug coverage to Medicare beneficiaries.

SECTION 28. "Member" means a person who has met all eligibility requirements and has been enrolled in the Indiana prescription drug program.

SECTION 29. “Noncovered drug” means a drug that is not on a Medicare Part D plan’s formulary or being treated as so as a result of a coverage determination or appeal.

SECTION 30. “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.

SECTION 31. “Office” means the office of the secretary of family and social services.

SECTION 32. “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. According to CMS, beneficiaries receiving “partial low-income subsidy” will be responsible for monthly premium on a sliding scale for standard Medicare Part D plans, will have a reduced annual deductible, and no gap in coverage.

SECTION 33. “Premium” means the monthly cost of being enrolled in a Medicare prescription drug plan.

SECTION 34. “Prescription drug” means any prescription drug that is not a noncovered drug.

SECTION 35. “Program” means the Indiana prescription drug program.

SECTION 36. “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.

SECTION 37. “Provider” means an entity that provides Medicare prescription drug coverage through a Medicare Part D plan in the state of Indiana and participates in the program in accordance with 8-6-1(a) and 8-6-2(b) *[sic.]*.

SECTION 38. “Secretary” means the secretary of family and social services.

SECTION 39. “Senior” means a person sixty-five (65) years of age or older.

SECTION 40. “Spouse” means the legal husband or wife of an applicant.

SECTION 41. “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. Standard Coverage and excludes enhanced plans.

SECTION 42. “True out-of-pocket costs” means prescrip-

tion drug costs that count towards a member’s Medicare Part D plan maximum out-of-pocket costs.

SECTION 43. To be eligible for the program, an applicant must be sixty-five (65) years of age or older.

SECTION 44. 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.

SECTION 45. Notwithstanding any other provision of this document, 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 is not domiciled in Indiana.
- (3) The individual does not intend to reside permanently in the state of Indiana.
- (4) The individual has not received a low-income subsidy determination from Social Security Administration.
- (5) The individual has been determined eligible for full low-income subsidy.
- (6) The individual is dually eligible for both Medicare and Medicaid.
- (7) The individual is an inmate of a correctional facility.
- (8) The individual is not enrolled in a Medicare Part D plan.

SECTION 46. (a) A completed applicant file will be processed by the office. A completed applicant file must include contain *[sic.]*:

- (1) Verification 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) Verification 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, over the telephone, or 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.

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SECTION 47. (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 no 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, prior to the end of the thirty (30) calendar day opt-out period.

SECTION 48. (a) An eligible member may receive premium assistance for the monthly premium cost of the Medicare prescription drug plan or Medicare-Advantage prescription drug plan and assistance with other Medicare prescription drug plan costs as defined in 405 IAC 8-6-2 [405 IAC 8-6-2 is proposed to be added at 29 IR 861.] 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 may only be applied to the prescription drug portion of a Medicare-Advantage prescription drug plan's monthly premium. IPDP premium assistance 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.

SECTION 49. (a) An eligible member may receive no 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 such 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 only be available for prescription drug plan costs that are countable to the beneficiary's true out-of-pocket costs. IPDP benefits shall not be used to pay for noncovered drugs.

SECTION 50. (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 enrolls in a Medicare Part D plan offering standard coverage in the state of Indiana and 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 low-income subsidy premium per month.

(f) IPDP premium assistance may only be applied to the prescription drug portion of a Medicare-Advantage prescription drug plan's monthly premium. IPDP premium assistance 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.

SECTION 51. (a) Benefits are available under 405 IAC 8-6-2 and 405 IAC 8-6-3 [405 IAC 8-6-2 and 405 IAC 8-6-3 are proposed to be added at 29 IR 861.] 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 do not receive any partial subsidy from Medicare and are between one hundred thirty-five percent (135%) and one hundred fifty percent (150%) FPL.

SECTION 52. All provider appeals from office action taken under this document 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 [405 IAC 8-8-1 is proposed to be added at 29 IR 862.], if applicable.

SECTION 53. The provisions of 405 IAC 1-5 concerning contents, retention, and disclosure of records of Medicaid providers shall apply to providers of Medicare prescription drug plans and Medicare-Advantage prescription drug plans.

SECTION 54. (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 [405 IAC 8-7-1 is proposed to be added at 29 IR 862.]. However, prior to filing such an appeal, the provider must:

- (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; or
- (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 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 prior to payment by the office or its contractor, for completeness, including required documentation, and accuracy and appropriateness as indicated.

(d) The office is only liable for the payment of claims filed by 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 a member or from the authorized representative of the member that portion of his or her premium above any benefit paid by the Indiana prescription drug program.

SECTION 55. (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 [405 IAC 8-7-2 is proposed to be added at 29 IR 862.].
- (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:

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(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 such conduct following notification that the conduct should cease.

(E) 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 pursuant to this document 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 SECTION.

(M) 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 mailed to the provider by United States mail at the address contained in the office records and on the claims or 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 document.

(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 [405 IAC 8-7-1 is proposed to be added at 29 IR 862.].

(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 [405 IAC 8-7-1 is proposed to be added at 29 IR 862.].

SECTION 56. (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 paid for cannot be documented by the provider as required by 405 IAC 8-7-2 [405 IAC 8-7-2 is proposed to be added at 29 IR 862.];

(2) the benefits were provided to a person other than the person in whose name the claim was made and paid;

(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 paid claim arises out of any act or practice prohibited by law or by rules of the office;

(5) overpayment resulted from duplicate billing; or

(6) 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 (d), 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 (d).

(c) If:

(1) a provider elects to proceed under subsection (b)(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. Such agreement shall state that the amount of overpayment shall be deducted from subsequent payments to the provider. Such 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. Such 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 an audit, a reimbursement cost settlement or 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. Such interest will accrue from the date that the overpayment was recovered by the office until the date the overpayment is restored to the provider. Such interest will accrue 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 provider fails to elect one (1) of the options listed in subsection (b) within sixty (60) days and the 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.

SECTION 57. (a) The office may require the repayment of

any amount determined by the office to have been paid to the provider in error, prior to an evidentiary hearing or summary review, unless an appeal is pending and the provider has elected not to repay an alleged overpayment pursuant to SECTION 56(b)(3) of this document. 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 56 of this document.

(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.

SECTION 58. (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 document 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, claims for benefits which cannot be documented by the provider.

(2) Submitted, or caused to be submitted, claims for benefits provided to a person other than a person in whose name the claim is made.

(3) Submitted, or caused to be submitted, any false or fraudulent claims for services.

(4) Submitted, or caused to be submitted, information with the intent of obtaining greater compensation than that which the provider is legally entitled.

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(5) Engaged in a course of conduct or performed an act deemed by the office to be abusive of the program or continuing such conduct following notification that the conduct should cease.

(6) Breached, or caused to be breached, the terms of the contract.

(7) 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.

(8) Failed to 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.

(9) Failed to meet standards required by federal or state law for participation.

(10) Refused to execute a contract when requested to do so.

(11) Failed to correct deficiencies to provider operations after receiving written notice of these deficiencies from the office.

(12) Failed to 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:

- (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; and
- (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:

- (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 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.

SECTION 59. (a) It is the purpose of this SECTION to establish a uniform method of administrative review and administrative adjudication for appeals concerning appli-

cants 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 SECTION, policies include program manuals, administrative directives, transmittals, and other official written pronouncements of state policy.

(b) This SECTION 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 SECTION, "party" means:

- (1) a person to whom the agency action is specifically directed; or
- (2) the office of the secretary of family and social services.

(c) In the event that any provision of this document 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 document in which the conflict is found.

SECTION 60. (a) In the event that the rights, duties, obligations, privileges, or 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 56 of this document.

(b) Unless otherwise provided by law, only those persons or entities, or their respective attorneys at law, whose rights, duties, obligations, privileges, or other legal relations are alleged to have been adversely affected by any action or determination of the office, may request administrative review under this SECTION. Any alleged harm to an enrollee or applicant must be direct and immediate to the party and not indirect and general in character.

SECTION 61. (a) Any party complaining of an action of the office in accordance with this document may file a request for administrative review as provided in this SECTION.

(b) The enrollee or applicant is required to seek administrative review prior to filing an administrative appeal under SECTION 63 of this document.

(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.

SECTION 62. (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 SECTION.

(c) The written decision shall specify the reasons for the decision and identify the statutes, regulations, rules, and policies supporting the decision.

SECTION 63. (a) Any party who is not satisfied with the administrative review of the office as provided for in this SECTION 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 SECTION is not excused from exhausting all interim procedures that may be required by statute or rule for administrative review prior to 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:

- (1) inability to attend the hearing because of a serious physical or mental condition;
- (2) incapacitating injury;
- (3) death in the family;
- (4) severe weather conditions making it impossible to travel to the hearing;
- (5) unavailability of a witness and the evidence cannot be obtained otherwise; or

(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.

SECTION 64. (a) An administrative law judge's (ALJ) conduct 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:

- (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 partisan interests, public clamor, or 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; or
- (6) engaging in financial or business dealings that tend to:
 - (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; or
 - (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 his or her impartiality might reasonably be questioned, or in which 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:

- (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;

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- (8) dispose of procedural motions and similar matters; and
- (9) exercise such other powers as may be given by the law relating to the particular program area under appeal.

SECTION 65. (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.

SECTION 66. (a) Following completion of the hearing, or after submission of briefs by the parties (if briefing is permitted by the 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 SECTION 67 *[of this document]*.

(b) The ALJ's decision shall:

- (1) include findings of fact;
- (2) specify the reasons for the decision; and
- (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 cite the relevant laws upon which the ultimate decision is based, and relate the facts to the law.

SECTION 67. (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 65 of this document, 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:

- (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; or
- (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:

- (1) all parties of record;
- (2) the ALJ who rendered the decision following the evidentiary hearing; and
- (3) any other person designated by the secretary or designee.

SECTION 68. (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 prior to filing a petition for judicial review.

SECTION 69. (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 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:

- (1) Shall accept electronic auto-enrollment records in a standard defined by the IPDP.

(2) Shall 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) Shall 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) May place an IPDP logo on joint IPDP and PDP member prescription drug cards, if approved by the program.

(5) Shall provide IPDP with claims data on IPDP members in order for the IPDP to understand the utilization underlying its costs and for reconciliation of incurred and paid amounts.

(6) Shall comply with all federal regulations pertaining to Medicare Part D plans as outlined in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

SECTION 70. This document expires Feb. 28, 2006.

LSA Document #05-337(E)

Filed with Secretary of State: November 18, 2005, 12:20 p.m.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-326(E)

DIGEST

Temporarily amends provisions and adds provisions to include serious adverse event reporting to the requirements for a hospital's quality assessment and improvement program. Temporarily adds provisions to include serious adverse event reporting to the requirements for an ambulatory outpatient surgical center's quality assessment and improvement program. Temporarily adds various definitions. Authority: IC 4-22-2-37.1; IC 16-19-3-4; IC 16-21-1-7. Effective January 1, 2006.

SECTION 1. The definitions in this document apply throughout this document except as otherwise indicated.

SECTION 2. "ASA Class I patient" means a normal, healthy patient.

SECTION 3. "Biologics" means a biological product (such as a globulin, serum, vaccine, antitoxin, blood, or antigen) used in the prevention or treatment of disease.

SECTION 4. "Burn" means any injury or damage to the tissues of the body caused by exposure to fire, heat, chemicals, electricity, radiation, or gases.

SECTION 5. "Elopement" means any situation in which a registered or admitted patient, excluding adults with decision making capacity, leaves the hospital without staff being aware that the patient has done so.

SECTION 6. "Hyperbilirubinemia" means total serum bilirubin levels greater than twenty-five (25) mg/dl in a neonate.

SECTION 7. "Hypoglycemia" means a physiologic state in which the blood sugar falls below sixty (60) mg/dl (40 mg/dl in neonates) and physiological and/or neurological dysfunction begins.

SECTION 8. "Immediately postoperative" means within twenty-four (24) hours after induction of anesthesia (if surgery or other invasive procedure is not completed), or within twenty-four (24) hours after completion of surgery or other invasive procedure.

SECTION 9. "Informed consent" means a patient's authorization or agreement to undergo surgery or other invasive procedure that is based upon communication between a patient and his or her physician regarding such surgery or other invasive procedure.

SECTION 10. "Intended use" means the use of a device as described on the label and associated materials provided by the device's manufacturer.

SECTION 11. "Kernicterus" means the medical condition in which elevated levels of bilirubin cause brain damage.

SECTION 12. "Low-risk pregnancy" means a woman aged sixteen to thirty-nine (16-39), with no previous diagnosis of essential hypertension, renal disease, collagen-vascular disease, liver disease, preeclampsia, cardiovascular disease, placenta previa, multiple gestation, intrauterine growth retardation, smoking, pregnancy-induced hypertension, premature rupture of membranes, or other previously documented condition that poses a high risk of pregnancy-related mortality.

SECTION 13. "Neonates" means infants in the first twenty-eight (28) days of life.

SECTION 14. "Serious disability" means:

- (1) significant loss of function including sensory, motor, physiologic, or intellectual impairment not present on admission and requiring continued treatment or for which there is a high probability of long term or permanent lifestyle change at discharge; or
- (2) unintended loss of a body part.

SECTION 15. "Spinal manipulative therapy" means all types of manual techniques, including spinal mobilization (movement of a joint within its physiologic range of motion)

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and manipulation (movement of a joint beyond its normal voluntary physiologic range of motion), regardless of their precise anatomic and physiologic focus or their discipline of origin.

SECTION 16. For purposes of SECTION 18 and SECTION 19 of this document [SECTIONS 18 and 19 of this document], “surgery or other invasive procedure” means surgical or other invasive procedures that involve a skin incision or puncture including, but not limited to, open or percutaneous surgical procedures, percutaneous aspiration, selected injections, biopsy, percutaneous cardiac and vascular diagnostic or interventional procedures, laparoscopies, endoscopies, colonoscopies, and excluding intravenous therapy, venipuncture for phlebotomy, or diagnostic tests without intravenous contract agents.

SECTION 17. “Toxic substance” means chemicals that are present in sufficient concentration to pose a hazard to human health.

SECTION 18. (a) The hospital’s quality assessment and improvement program under 410 IAC 15-1.4-2 shall include:

(1) A process for determining the occurrence of the following serious adverse events within the hospital:

(A) Surgical events:

(i) Surgery performed on the wrong body part, defined as any surgery performed on a body part that is not consistent with the documented informed consent for that patient. Excludes emergent situations that occur in the course of surgery and/or whose exigency precludes obtaining informed consent.

(ii) Surgery performed on the wrong patient, defined as any surgery on a patient that is not consistent with the documented informed consent for that patient.

(iii) Wrong surgical procedure performed on a patient, defined as any procedure performed on a patient that is not consistent with the documented informed consent for that patient. Excludes emergent situations that occur in the course of surgery and/or whose exigency precludes obtaining informed consent.

(iv) Retention of a foreign object in a patient after surgery or other invasive procedure. Excludes objects intentionally implanted as part of a planned intervention and objects present prior to surgery that were intentionally retained.

(v) Intraoperative or immediately postoperative death in an ASA Class I patient. Includes all ASA Class I patient deaths in situations where anesthesia was administered; the planned surgical procedure may or may not have been carried out.

(B) Product or device events:

(i) Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the hospital. Includes generally detectable

contaminants in drugs, devices, or biologics regardless of the source of contamination or product.

(ii) Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended.

Includes, but is not limited to:

(AA) catheters;

(BB) drains and other specialized tubes;

(CC) infusion pumps; and

(DD) ventilators.

(iii) Patient death or serious disability associated with intravascular air embolism that occurs while being cared for in the hospital. Excludes deaths associated with neurosurgical procedures known to present a high risk of intravascular air embolism.

(C) Patient protection events:

(i) Infant discharged to the wrong person.

(ii) Patient death or serious disability associated with patient elopement (disappearance) for more than four (4) hours. Excludes events involving adults with decision making capacity.

(iii) Patient suicide or attempted suicide resulting in serious disability, while begin [*sic., being*] cared for in the hospital, defined as events that result from patient actions after admission to the hospital. Excludes deaths resulting from self-inflicted injuries that were the reason for admission to the hospital.

(D) Care management events:

(i) Patient death or serious disability associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration). Excludes reasonable differences in clinical judgment on drug selection and dose.

(ii) Patient death or serious disability associated with a hemolytic reaction due to the administration of ABO-incompatible blood or blood products.

(iii) Maternal death or serious disability associated with labor or delivery in a low-risk pregnancy while being cared for in the hospital. Includes events that occur within forty-two (42) days postdelivery. Excludes deaths from pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy, or cardiomyopathy.

(iv) Patient death or serious disability associated with hypoglycemia, the onset of which occurs while the patient is being cared for in the hospital.

(v) Death or serious disability (kernicterus) associated with hyperbilirubinemia in neonates.

(vi) Stage 3 or 4 pressure ulcers acquired after admission to the hospital. Excludes progression from Stage 2 to Stage 3 if Stage 2 was recognized upon admission.

(vii) Patient death or serious disability due to spinal manipulation therapy performed in the hospital.

(E) Environmental events:

(i) Patient death or serious disability associated with

an electric shock while being cared for in the hospital. Excludes events involving planned treatment, such as electrical countershock.

(ii) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances.

(iii) Patient death or serious disability associated with a burn incurred from any source while being cared for in the hospital.

(iv) Patient death associated with a fall while being cared for in the hospital.

(v) Patient death or serious *[sic., serious]* disability associated with the use of restraints or bedrails while being cared for in the hospital.

(F) Criminal events:

(i) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider.

(ii) Abduction of a patient of any age.

(iii) Sexual assault on a patient within or on the grounds of the hospital.

(iv) Death or significant injury of a patient or staff member resulting from a physical assault (i.e., battery) that occurs within or on the grounds of the hospital; and

(2) A process for reporting to the department each serious adverse event listed in subsection (a)(1) *[subdivision (1)]* that is determined by the hospital's quality assessment and improvement program to have occurred within the hospital.

(b) Subject to subsection (e) *[sic.]*, the process for determining the occurrence of the serious adverse events listed in subsection (a)(1) by the hospital's quality assessment and improvement program shall be designed by the hospital to accurately determine the occurrence of any of the serious adverse events listed in subsection (a)(1) within the hospital in a timely manner.

(c) Subject to subsection (e) *[sic.]*, the process for reporting the occurrence of a serious adverse event listed in subsection (a)(1) shall comply with the following:

(1) The report shall be made to the department.

(2) The report shall be submitted not later than fifteen (15) working days after the serious adverse event is determined to have occurred by the hospital's quality assessment and improvement program.

(3) The report shall identify the serious adverse event and the hospital, but shall not include any identifying information for any patient, individual licensed under IC 25, or hospital employee involved, or any other information.

(4) The report, and any documents permitted under this SECTION to accompany the report, shall be submitted in an electronic format, including a format for electronically affixed signatures.

(d) The hospital's report of a serious adverse event listed in subsection (a)(1) shall be used by the department for purposes of publicly reporting the type and number of such serious adverse events occurring within each hospital. The department's public report will be issued no less frequently than annually.

SECTION 19. (a) The center's quality assessment and improvement program under 410 IAC 15-2.4-2 shall include:

(1) A process for determining the occurrence of the following serious adverse events within the center:

(A) Surgical events:

(i) Surgery performed on the wrong body part, defined as any surgery performed on a body part that is not consistent with the documented informed consent for that patient. Excludes emergent situations that occur in the course of surgery and/or whose exigency precludes obtaining informed consent.

(ii) Surgery performed on the wrong patient, defined by any surgery on a patient that is not consistent with the documented informed consent for that patient.

(iii) Wrong surgical procedure performed on a patient, defined as any procedure performed on a patient that is not consistent with the documented informed consent for that patient. Excludes emergent situations that occur in the course of surgery and/or whose exigency precludes obtaining informed consent.

(iv) Retention of a foreign object in a patient after surgery or other invasive procedure. Excludes objects intentionally implanted as part of a planned intervention and objects present prior to surgery that were intentionally retained.

(v) Intraoperative or immediately postoperative death in an ASA Class I patient. Includes all ASA Class I patient deaths in situations where anesthesia was administered; the planned surgical procedure may or may not have been carried out.

(B) Product or device events:

(i) Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the center. Includes generally detectable contaminants in drugs, devices, or biologics regardless of the source of contamination and/or product.

(ii) Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended. Includes, but is not limited to:

- (AA) catheters;
- (BB) drains and other specialized tubes;
- (CC) infusion pumps; and
- (DD) ventilators.

(iii) Patient death or serious disability associated with intravascular air embolism that occurs while being cared for in the center. Excludes deaths associated with neurosurgical procedures known to present a high risk of intravascular air embolism.

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(C) Patient protection events:

- (i) Infant discharged to the wrong person.
- (ii) Patient death or serious disability associated with patient elopement (disappearance) for more than four (4) hours. Excludes events involving competent adults.
- (iii) Patient suicide or attempted suicide resulting in serious disability, while begin [*sic., being*] cared for in the center, defined as events that result from patient actions after admission to the center. Excludes deaths resulting from self-inflicted injuries that were the reason for admission to the center.

(D) Care management events:

- (i) Patient death or serious disability associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration). Excludes reasonable differences in clinical judgment on drug selection and dose.
- (ii) Patient death or serious disability associated with a hemolytic reaction due to the administration of ABO-incompatible blood or blood products.
- (iii) Maternal death or serious disability associated with labor or delivery in a low-risk pregnancy while being cared for in the hospital. Includes events that occur within forty-two (42) days postdelivery. Excludes deaths from pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy, or cardiomyopathy.
- (iv) Patient death or serious disability associated with hypoglycemia, the onset of which occurs while the patient is being cared for in the center.
- (v) Death or serious disability (kernicterus) associated with hyperbilirubinemia in neonates.
- (vi) Stage 3 or 4 pressure ulcers acquired after admission to the hospital. Excludes progression from Stage 2 to Stage 3 if Stage 2 was recognized upon admission.
- (vii) Patient death or serious disability due to spinal manipulation therapy performed in the center.

(E) Environmental events:

- (i) Patient death or serious disability associated with an electric shock while being cared for in the center. Excludes events involving planned treatment, such as electrical countershock.
- (ii) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances.
- (iii) Patient death or serious disability associated with a burn incurred from any source while being cared for in the center.
- (iv) Patient death associated with a fall while being cared for in the center.
- (v) Patient death or serious [*sic., serious*] disability associated with the use of restraints or bedrails while being cared for in the center.

(F) Criminal events:

- (i) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharma-

cist, or other licensed health care provider.

- (ii) Abduction of a patient of any age.
- (iii) Sexual assault on a patient within or on the grounds of the center.
- (iv) Death or significant injury of a patient or staff member resulting from a physical assault (i.e., battery) that occurs within or on the grounds of the center; and

(2) A process for reporting to the department each serious adverse event listed in subsection (a)(1) [*subdivision (1)*] that is determined by the center's quality assessment and improvement program to have occurred within the center.

(b) Subject to subsection (e) [*sic.*], the process for determining the occurrence of the serious adverse events listed in subsection (a)(1) by the center's quality assessment and improvement program shall be designed by the center to accurately determine the occurrence of any of the serious adverse events listed in subsection (a)(1) within the center in a timely manner.

(c) Subject to subsection (e) [*sic.*], the process for reporting the occurrence of a serious adverse event listed in subsection (a)(1) shall comply with the following:

- (1) The report shall be made to the department.
- (2) The report shall be submitted as soon as reasonably and practicably possible, but not later than fifteen (15) working days after the serious adverse event is determined to have occurred by the center's quality assessment and improvement program.
- (3) The report shall identify the serious adverse event and the center, but shall not include any identifying information for any patient, individual licensed under IC 25, or center employee involved, or any other information.
- (4) The report, and any documents permitted under this SECTION to accompany the report, shall be submitted in an electronic format, including a format for electronically affixed signatures.

(d) The center's report of a serious adverse event listed in subsection (a)(1) shall be used by the department for purposes of publicly reporting the type and number of such serious adverse events occurring within each center. The department's public report will be issued no less frequently than annually.

LSA Document #05-326(E)

Filed with Secretary of State: November 10, 2005, 2:20 p.m.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-327(E)

DIGEST

Temporarily adds provisions to establish rules regarding

admission, maintenance, and discharge of residents of the Indiana Veterans' Home. Authority: IC 4-22-2-37.1; IC 16-19-3-5. Effective November 12, 2005.

SECTION 1. The definitions in this rule *[document]* apply throughout this article *[document]*.

SECTION 2. "Applicant" means a person applying for admission into the Indiana veterans' home.

SECTION 3. "Date of application" means the date that a completed application for admission is received in the admissions office of the Indiana veterans' home.

SECTION 4. "Home" means the Indiana veterans' home governed by IC 10-17-9 and IC 16-19-6.

SECTION 5. "Legal representative" means a person who is:

- (1) a guardian;
- (2) a health care representative;
- (3) an attorney in fact; or
- (4) a person authorized by IC 16-36-1-5 to give health care consent.

SECTION 6. "Maintenance charge" means the amount the resident is required to pay for his stay at the home, which is established pursuant to IC 10-17-9-11. It is also known as the daily room rate. The maintenance charge will be less than or equal to the maintenance costs for the applicant or resident.

SECTION 7. "Maintenance costs" means the full cost of maintaining a resident at the home calculated pursuant to IC 10-17-9-8. It is also known as the per capita cost.

SECTION 8. "Resident" means a member or person who has been admitted to the Indiana veterans' home and resides there.

SECTION 9. (a) "Superintendent" means the superintendent of the Indiana veterans' home who:

- (1) has the immediate charge and management of the home;
- (2) directs and controls the home employees; and
- (3) superintends the care and management of the residents in the home.

(b) The superintendent includes a designee of the superintendent.

SECTION 10. (a) An applicant shall apply for admission to the home by submitting a completed application form prescribed by the home. The completed application shall be signed by the applicant and notarized.

(b) In addition to the application required under subsection (a), an applicant shall submit the following:

- (1) A copy of the applicant's military discharge.
 - (2) Information concerning current income, including, but not limited to, the following:
 - (A) Pensions.
 - (B) Compensation or income from any source.
 - (C) Benefits from:
 - (i) the Social Security Administration;
 - (ii) the railroad retirement law; or
 - (iii) a retirement annuity or insurance annuity.
 - (3) A resident services agreement signed by the applicant.
 - (4) Either:
 - (A) a letter by the auditor of the applicant's county of residence stating whether the applicant has owned property within the last three (3) years; or
 - (B) the applicant's property tax statement.
 - (5) Information concerning assets including, but not limited to, the following:
 - (A) Cash accounts, including, but not limited to, the following:
 - (i) Cash.
 - (ii) Checking.
 - (iii) Savings.
 - (iv) Security deposits.
 - (B) Securities, including, but not limited to, the following:
 - (i) Bonds, notes, and mortgages.
 - (ii) Stocks, options, and commodity contracts.
 - (C) Loans to others and accounts receivable.
 - (D) Interest in any business.
 - (E) Real estate.
 - (F) Vested interests in trusts.
 - (G) Personal property, including, but not limited to, the following:
 - (i) Jewelry.
 - (ii) Art.
 - (iii) Antiques.
 - (iv) Gold and precious metals.
 - (v) Vehicles.
 - (6) Copies of all health insurance cards and values for life insurance.
 - (7) Any other documentation that the home may require in order to determine financial assets.
- (c) In addition to the application required under subsection (a) and additional items required under subsection (b), an applicant who is a spouse or surviving spouse of a veteran shall submit the following:
- (1) A copy of the veteran's military discharge.
 - (2) A copy of a certificate of marriage to the veteran.
 - (3) If the veteran spouse is deceased, a certified copy of the death certificate.
- (d) The applicant is responsible for reporting any changes that occur in the applicant's income or assets during the application and admission process.

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(e) The application form required by subsection (a) and additional documentation required by subsections (b), (c), and (d) [subsections (b) through (d)] shall be submitted to the Admissions Office, Indiana Veterans' Home, 3851 N. River Road, West Lafayette, IN 47906.

(f) The burden is on the applicant to complete the application and submit the required documentation. An incomplete application may be returned to the applicant.

SECTION 11. (a) This SECTION applies only to applications received after the effective date of this article [document].

(b) An applicant shall apply for the maximum of every benefit or assistance program for which the applicant may be eligible that will increase the income of the applicant or provide reimbursement to the home for the resident's care. Such benefits or assistance programs include, but are not limited to:

- (1) Social Security benefits;
- (2) veterans benefits;
- (3) retirement benefits;
- (4) private pensions;
- (5) Medicare Part A and Part B;
- (6) long term care insurance;
- (7) Medicaid; or
- (8) any combination of benefit or assistance programs.

(c) The staff shall provide an applicant with information about benefits or assistance programs and help in applying for those benefits.

(d) An applicant may be required to provide a power of attorney or a release of information to the superintendent in order to assist in investigating the applicant's financial condition and to aid in securing any benefits or assistance programs for which the applicant may be eligible.

(e) An applicant shall agree that when the applicant's available resources are insufficient to pay the entire cost of care or maintenance on a current basis, he will apply for the maximum of every benefit or assistance program for which the applicant or resident may be eligible, including, but not limited to, the benefits or assistance programs listed in subsection (b).

SECTION 12. (a) Upon receipt of an application for admission, the superintendent may conduct an assessment to determine the home's ability to meet the applicant's medical, cognitive, and psychosocial needs and an investigation to determine the financial status of the applicant.

(b) The purpose of the initial financial status review is to determine the applicant's maintenance charge.

(c) The admissions committee shall require the following:

(1) Documentation of a chest x-ray in compliance with 410 IAC 16.2-3.1-18(c).

(2) Documentation of compliance with the health assessment and tuberculosis testing required by 410 IAC 16.2-3.1-18.

(d) An admissions committee shall:

- (1) review each application and all pertinent documentation to ensure inclusion of all information and documents necessary to determine eligibility for admission; and
- (2) determine whether the applicant has satisfied the applicable requirements of SECTIONS 10 and 11 of this document.

(e) If the application is complete and the applicable requirements of SECTIONS 10 and 11 of this document have been satisfied, the admissions committee shall arrange for a preadmission assessment. The preadmission assessment may be conducted at the home, a nursing home, other facility, or the applicant's residence.

(f) In addition to the preadmission screening, the applicant shall participate in the state's Prescreening Assessment and Resident Review (PASRR), if the admission is to the comprehensive care portion of the home.

(g) After receiving the results of the preadmission screening, the admissions committee shall recommend to the superintendent that an applicant's admission be approved or denied.

(h) Applications will be reviewed in the order of receipt of completed applications.

SECTION 13. (a) The superintendent may approve an applicant's admission to the home, provided that:

(1) The applicant:

- (A) submits a completed application;
- (B) satisfies all requirements of SECTIONS 10 and 11 of this document;
- (C) agrees to a voluntary admission; and
- (D) completes and signs a resident services agreement.

(2) The applicant satisfies:

- (A) the eligibility requirements described in IC 10-17-9-7; and
- (B) the requirements for the level of care for which the applicant applies.

(3) The admissions committee recommends admission.

(b) The superintendent may deny an admission if the applicant fails to meet the requirements of subsection (a).

(c) If an appropriate bed is not available at the time of admission, the superintendent shall place the applicant's name on a waiting list in order by date of application approval.

(d) Applicants are admitted from the waiting list in the order in which their applications are approved, subject to bed availability in the program or service area for which admission has been approved.

(e) The superintendent shall notify an applicant of the date and time that an applicant may be admitted to the home. An applicant on a waiting list more than thirty (30) days shall submit an updated medical information form completed by his physician before receiving such notification.

(f) An applicant may be denied admission when in the interim between application approval and scheduled admission date:

(1) the applicant's health care needs have changed to the extent that the program or service for which the applicant was originally approved can no longer meet the applicant's health care needs; or

(2) the applicant's service needs have changed to such an extent that the home can no longer meet the applicant's health care or service needs.

(g) An applicant who declines a scheduled admission may be placed at the bottom of the appropriate service waiting list. The next person on the waiting list will be invited for admission.

(h) If the applicant has any change in financial status in the interim between application approval and scheduled admission, or additional financial information becomes available, the applicant shall submit an updated financial information form within fourteen (14) days after learning of the information or change in status.

SECTION 14. Before admission, all applicants receive information which states all of the following:

(1) The applicant's maintenance charge and the maintenance costs.

(2) The due date for monthly payments of the maintenance charge.

(3) The source of funds from which payment is to be made.

(4) The consequences of nonpayment.

SECTION 15. The maintenance cost of each resident shall be calculated annually.

SECTION 16. (a) Each resident shall promptly provide the superintendent with a statement reflecting all income and resources of the resident at the following times:

(1) Annually.

(2) Within fourteen (14) days of any change in income.

(3) Within fourteen (14) days of receipt of any lump sum/back-award payment of benefits. The home shall provide forms for reporting of income and resources.

(b) The statement required in subsection (a) shall include all of the resident's resources including those listed in SECTION 10 of this document.

(c) A resident unable to furnish the information required by subsections (a) and (b) may be required to provide the superintendent with a power of attorney or release of information to enable the superintendent to obtain financial information that is needed to satisfy the requests for information under subsections (a) and (b).

(d) The staff of the home may help residents complete and submit appropriate statements required by subsections (a) and (b) in a timely manner and resolve any underpayment or overpayment of benefits.

SECTION 17. (a) The superintendent shall review the financial status of each resident as follows:

(1) Annually.

(2) Upon any change of circumstances that may affect the resident's financial status or ability to pay the resident's maintenance costs.

(b) The financial status review described in subsection (a) shall include a determination of the ability of each resident to pay for the resident's maintenance costs.

(c) The resident's ability to pay the maintenance costs shall be determined from all of the resident's financial resources including those listed in SECTION 10 of this document.

(d) The home shall notify the resident of any change in the resident's maintenance charge following a financial status review.

SECTION 18. The resident services agreement is a contract that shall be signed by the applicant or resident and shall include, but not be limited to, the following:

(1) The name and address of the applicant or resident and his legal representative, if any.

(2) The detail of the applicant or resident's income and resources used to calculate the maintenance charges.

(3) The amount of the maintenance charge for the applicant or resident.

(4) A statement that the applicant or resident agrees to comply with all home policies regarding residents, all applicable state laws, and this article [document].

SECTION 19. (a) Residents admitted to the home before the effective date of this article [document] are not required to comply with subsections (c), (e), (f), (g), and (j)(3) [subsections (c), (e) through (g), and (j)(3)].

(b) Each resident is responsible for payment of the resident's maintenance costs.

Emergency Rules

(c) A resident whose available resources are insufficient to pay the entire maintenance costs on a current basis shall apply for the maximum of every benefit or assistance program for which the resident may be eligible, including, but not limited to, the benefits or assistance programs listed in SECTION 11 of this document.

(d) The home shall provide each resident with information about possible available benefits or programs of assistance and assistance in applying for those benefits.

(e) Each resident shall comply with any reporting requirements necessary to initiate or continue any benefits to which a resident is entitled.

(f) Each resident, who may be eligible for benefits including, but not limited to, the benefits listed in subsection (c), shall provide necessary information and fully cooperate with the superintendent in the application for and maintenance of such benefits.

(g) A resident may be required to provide a power of attorney or a release of information to the superintendent in order to assist in securing any benefits for which the resident may be eligible.

(h) A resident shall be billed for maintenance charges as follows:

- (1) The maintenance charge shall be billed monthly.
- (2) The maintenance charge shall be mailed to the address designated by the resident on the resident's application for admission.
- (3) A resident shall be charged for the day of admission but not for the day of discharge. For purposes of this item [subdivision], one (1) day is the twenty-four (24) hour period ending at midnight.
- (4) A billing shall state the date by which payment shall be received.

Failure of the home to comply with subsection (1) through subsection (5) [sic.] shall not relieve the resident of the obligation to pay.

(i) The amount of the billed maintenance charge may be redetermined at any time upon a change in circumstances related to the resident's ability to pay.

(j) A resident's account is considered delinquent if a resident willfully refuses or willfully fails to pay the maintenance charge bill by the due date. Residents shall be notified if payment has not been received by the due date printed on the bill. A "willful refusal or willful failure to pay" occurs when:

- (1) the decision of whether to pay is completely within the control of the resident;
- (2) a resident has the ability or resources to pay the maintenance charge and fails to pay; or
- (3) a resident has not paid his maintenance costs and fails

to apply for the maximum of every benefit or assistance program available, as required by SECTION 11(b) of this document.

(k) The home shall not require a third party guarantee for payment to the home as a condition of admission or continued stay at the home.

SECTION 20. A resident shall be voluntarily discharged from the home when:

- (1) the resident has satisfactorily demonstrated a readiness to return to independent living; or
- (2) the resident no longer wishes to remain a resident.

SECTION 21. A resident may be discharged from the home pursuant to 410 IAC 16.2-3.1-12.

SECTION 22. A resident may appeal a transfer or discharge by following the procedures detailed in 410 IAC 16.2-3.1-12.

SECTION 23. An applicant may appeal under IC 4-21.5 the superintendent's decision of approval of admission or denial of admission pursuant to SECTION 13 of this document.

LSA Document #05-327(E)

Filed with Secretary of State: November 10, 2005, 2:20 p.m.

**TITLE 105 INDIANA DEPARTMENT OF
TRANSPORTATION**

LSA Document #05-161

The Indiana Department of Transportation gives notice that the date of the second public hearing for LSA Document #05-161, printed at 29 IR 59, has been changed. The changed second Notice of Public Hearing appears below:

Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on **January 25, 2006** at 10:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room N730, Indianapolis, Indiana, the Indiana Department of Transportation will hold a second public hearing on proposed new rules, printed at 29 IR 59, 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 open for public inspection.

Richard K. Smutzer
Chief Engineer
Indiana Department of Transportation

**TITLE 326 AIR POLLUTION CONTROL
BOARD**

LSA Document #04-181(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of LSA Document #04-181(APCB), printed at 28 IR 413, 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 new rules at 326 IAC 20-80 concerning national emission standards*

for hazardous air pollutants for surface coating of miscellaneous metal parts and products and 326 IAC 20-81 concerning national emission standards for hazardous air pollutants for surface coating of plastic parts and products.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027, press 0, and ask for ext. 3-6868 (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 at 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 326 AIR POLLUTION CONTROL
BOARD**

LSA Document #05-117(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of LSA Document #05-117(APCB), printed at 29 IR 909, 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 **April 13, 2006**, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana, the Air*

Change in Notice of Public Hearing

Pollution Control Board will hold a public hearing on new rules 326 IAC 10-4-16, 326 IAC 24-1, 326 IAC 24-2, and 326 IAC 24-3.

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, press 0, and ask for ext. 3-5697 (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 at 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

mum education and experience requirements established under IC 25-21.5-5-2 for admission to the land surveyor and land-surveyor-in-training examination, concerning students enrolled in an approved land surveying curriculum submitting the SIT examination application to a board designee on the student's campus, to update and clarify requirements concerning examinations, to revise the standards for comity registration, to revise the design, application, and use of the land surveyor seal, and to establish the definitions, standards, and requirements for the use of electronic or digital signatures, to clarify language regarding the payment of renewal fees, to require a registrant to identify the address of all the offices that the registrant is in responsible charge of land surveying work, and to require a registrant to notify the board of any change in the registrant's address and office address, to update the disclosure of conflicts of interest, to revise the standards for the competent practice of land surveying, to revise the continuing education requirements for registered land surveyors, to revise the requirements for land surveyor continuing education providers, and to repeal 865 IAC 1-4-9, 865 IAC 1-10-11, 865 IAC 1-12-8, 865 IAC 1-12-15, 865 IAC 1-12-16, 865 IAC 1-12-17, 865 IAC 1-12-19, and 865 IAC 1-12-26.

The Board has the authority to promulgate rules in accordance with IC 4-22-2 to enforce and administer IC 25-21.5, including establishing the standards for the competent practice of land surveying. This proposed rule will have some costs on small businesses. The proposed rule clarifies language to make the rules consistent with the Board's statutes, removes out-of-date and unnecessary language in the rules, revises and clarifies the standards for the competent practice of land surveying to reflect the current practice and to assist the Board in disciplinary hearings, and revises the continuing education requirements to allow licensees to carry over excess hours and allow continuing education providers to submit continuing education hours electronically. This proposed rule will have some costs on the regulated entities.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #05-82

The State Board of Registration for Land Surveyors gives notice that the date of the public hearing for LSA Document #05-82, printed at 29 IR 659, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on **February 10, 2006 at 9:00 a.m.**, at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the State Board of Registration for Land Surveyors will hold a public hearing on proposed amendments to revise the definitions and board meeting scheduling, to revise the mini-

TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #05-359

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

OVERVIEW: Adds provisions to implement a quality assessment on health facilities that are not Medicaid-enrolled nursing facility providers as authorized by Public Law 186-2005 (HEA 1662). Statutory authority: IC 6-8.1-3-3; P.L.186-2005.

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

Thomas D. Conley, Administrator
Tax Policy Division
Department of Revenue
100 N. Senate Avenue, Room N248
Indianapolis, IN 46204
(317) 232-7282
tconley@dor.state.in.us

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-341

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

OVERVIEW: Amends 312 IAC 13 governing water well drilling contractors to make several substantive and technical changes. New grouting requirements are applied to geothermal heat pump wells. Numerical diameter requirements for a monitoring well are replaced by a functionality requirement. Modifications are made to standards for a filter pack seal in a monitoring well. Standards are established for a monitoring well constructed by the direct push method. For a cover on a bucket well or a hand dug well that was abandoned before January 1, 1988, lumber is no longer authorized if treated with chromium copper arsenic salt. Other technical changes are made. 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, by e-mail at slucas@nrc.in.gov, or by telephone at (317) 233-3322. Statutory authority: IC 25-39-4.

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

Mark Basch
Department of Natural Resources
Division of Water, Room W264
Indianapolis, IN 46204
(877) 928-3755 or (317) 232-0154
mbasch@dnr.in.gov

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-344

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

OVERVIEW: Amends 312 IAC 8-2-8 to provide for the use of motorized carts at state parks and recreation areas consistent with amendments to IC 14-19-1-1 that were set forth in HEA 1765 (P.L.225-2005, SECTION 15). 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, by e-mail at slucas@nrc.in.gov, or by telephone at (317) 233-3322. Statutory authority: IC 14-10-2-4; IC 14-19-1-1.

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

John Bergman
Department of Natural Resources
Division of State Parks and Reservoirs
Indiana Government Center-South
402 West Washington Street, Room W298
Indianapolis, IN 46204
(317) 232-4131
jbergman@dnr.in.gov

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

LSA Document #05-347

Under IC 4-22-2-23, the Office of the Children's Health Insurance Program intends to adopt a rule concerning the following:

OVERVIEW: Amends 407 IAC 3 to add coverage for community mental health rehabilitation services (Medicaid rehabilitation option). Questions or comments concerning the proposed rule may be directed to the Small Business Regulatory Coordinator for the rule. Statutory authority: IC 12-17.6-2-11.

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

Ann Alley, Director
Office of the Children's Health Insurance Program
Indiana Government Center-South
402 W. Washington Street, Room W-382
Indianapolis, IN 46204
(317) 232-4390
ann.alley@fssa.in.gov

Notice of Intent to Adopt a Rule

TITLE 515 ADVISORY BOARD OF THE DIVISION OF PROFESSIONAL STANDARDS

NOTE: Under P.L.246-2005, SECTION 234, the name of the Professional Standards Board is changed to the Advisory Board of the Division of Professional Standards, effective July 1, 2005.

LSA Document #05-338

Under IC 4-22-2-23, the Advisory Board of the Division of Professional Standards intends to adopt a rule concerning the following:

OVERVIEW: Amends 515 IAC 8-1 to add a definition to reflect that the responsibility for teacher licensing has been transferred to the Department of Education, make revisions to 515 IAC 8-1-21, and add a clarifying statement and make revisions to 515 IAC 8-1-35. Statutory authority: IC 20-28-2-6.

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

Shawn Sriver, Director, Division of Professional Standards
Indiana Department of Education
Room 229, State House
Indianapolis, IN 46204
(317) 232-9014
ssriver@psb.in.gov

TITLE 515 ADVISORY BOARD OF THE DIVISION OF PROFESSIONAL STANDARDS

NOTE: Under P.L.246-2005, SECTION 234, the name of the Professional Standards Board is changed to the Advisory Board of the Division of Professional Standards, effective July 1, 2005.

LSA Document #05-339

Under IC 4-22-2-23, the Advisory Board of the Division of Professional Standards intends to adopt a rule concerning the following:

OVERVIEW: Amends 515 IAC 9-1 to add a definition to reflect that the responsibility for teacher licensing has been transferred to the Department of Education and make revisions to 515 IAC 9-1-2. Repeals 515 IAC 1-2-2. Statutory authority: IC 20-28-2-6.

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

Shawn Sriver, Director, Division of Professional Standards
Indiana Department of Education
Room 229, State House
Indianapolis, IN 46204
(317) 232-9014
ssriver@psb.in.gov

TITLE 515 ADVISORY BOARD OF THE DIVISION OF PROFESSIONAL STANDARDS

NOTE: Under P.L.246-2005, SECTION 234, the name of the Professional Standards Board is changed to the Advisory Board of the Division of Professional Standards, effective July 1, 2005.

LSA Document #05-340

Under IC 4-22-2-23, the Advisory Board of the Division of Professional Standards intends to adopt a rule concerning the following:

OVERVIEW: Amends 515 IAC 12-1 to reflect that the responsibility for teacher licensing has been transferred to the Department of Education and include a clarifying statement regarding the time that continuing education must be completed under this license. Statutory authority: IC 20-28-2-6.

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

Shawn Sriver, Director, Division of Professional Standards
Indiana Department of Education
Room 229, State House
Indianapolis, IN 46204
(317) 232-9014
ssriver@psb.in.gov

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #05-348

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: The proposed rule amends 675 IAC 14-4.3, the 2005 Indiana Residential Code, Section R602.10.5, to clarify the intent and interpretation of that section. Public comments are invited and may be directed to the Indiana Department of Homeland Security, Code Services Section, Attn: Mara Snyder, Indiana Government Center-South, 302 West Washington Street, Rm. E243, Indianapolis, Indiana 46204. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

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

Mara Snyder
Legal and Code Services
Indiana Department of Homeland Security
Indiana Government Center-South
302 W. Washington Street, Rm. E243
Indianapolis, Indiana 46204
(317) 233-5341
msnyder@dhs.in.gov

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-349

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

OVERVIEW: To adopt the standards contained in the National Association of Insurance Commissioners model law regarding property and casualty actuarial opinions. Written comments should be addressed to Amy Strati, Chief Counsel, Department of Insurance, 311 W. Washington Street, Indianapolis, IN 46204. Statutory authority: IC 27-1-3-7.

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

Amy Strati, Chief Counsel
Department of Insurance
311 W. Washington Street
Indianapolis, IN 46204
(317) 232-0143
astrati@doi.state.in.us

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-350

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

OVERVIEW: To amend 760 IAC 1-61 regarding licensure and regulation of viatical settlement agents, brokers, and providers and contracts and disclosures, reporting, sales practices, and definitions and to otherwise implement IC 27-8-19.8. Written comments should be addressed to Amy Strati, Chief Counsel, Department of Insurance, 311 W. Washington Street, Indianapolis, IN 46204. Statutory authority: IC 27-8-19.8-26.

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

Amy Strati, Chief Counsel
Department of Insurance
311 W. Washington Street
Indianapolis, IN 46204
(317) 232-0143
astrati@doi.state.in.us

TITLE 812 INDIANA AUCTIONEER COMMISSION

LSA Document #05-345

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

OVERVIEW: Amends 812 IAC 3-1 concerning continuing education requirements to revise the number of continuing education hours and elective hours for renewal to bring the requirements into conformity with statutory changes, to modify the requirements for certificate of completion, and to allow instruction for an approved distance learning education course to be more than eight hours of instruction in one day. Adds 812 IAC 3-2 to establish distance learning continuing education requirements and procedures for auctioneers and to establish the requirements and procedures for the approval of distance learning continuing education course sponsors. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attention: Commission Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at plal1@pla.in.gov. Statutory authority: IC 25-6.1-2-5.

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

Deborah Widemon
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3050
dwidemon@pla.in.gov

TITLE 879 MANUFACTURED HOME INSTALLER LICENSING BOARD

LSA Document #05-346

Under IC 4-22-2-23, the Manufactured Home Installer Licensing Board intends to adopt a rule concerning the following:

OVERVIEW: Adds 879 IAC 1-4-3 to establish the types of experience needed to qualify for a manufactured home installer's license as required by IC 25-23.7-5-2. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attention: Board Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at plal1@pla.in.gov. Statutory authority: IC 25-23.7-3-8.

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

Deborah Widemon
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3050
dwidemon@pla.in.gov

**TITLE 10 OFFICE OF ATTORNEY GENERAL
FOR THE STATE**

**Proposed Rule
LSA Document #05-319**

DIGEST

Adds 10 IAC 5 to provide definitions, mitigating factors, and notice requirements regarding the release of Social Security numbers by state agencies. Effective 30 days after filing with the Secretary of State.

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

Upon review by the Office of the Attorney General, the Office of the Attorney General has determined that this rule has no fiscal impact on regulated entities. The rule does not impose requirements, restrictions, or sanctions on small business and has no fiscal impact, direct or collateral, on small business or the small business community.

10 IAC 5

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

ARTICLE 5. RELEASE OF SOCIAL SECURITY NUMBERS BY STATE AGENCIES

Rule 1. Authority and Applicability

10 IAC 5-1-1 Authority

Authority: IC 4-1-10-13
Affected: IC 4-1-10

Sec. 1. This article is adopted under the authority granted to the attorney general by the release of Social Security number act (IC 4-1-10-13). *(Office of Attorney General for the State; 10 IAC 5-1-1)*

10 IAC 5-1-2 Applicability

Authority: IC 4-1-10-13
Affected: IC 4-1-10

Sec. 2. The definitions in IC 4-1-10 and 10 IAC 5-2 apply throughout this article. *(Office of Attorney General for the State; 10 IAC 5-1-2)*

10 IAC 5-1-3 Effective date

Authority: IC 4-1-10-13
Affected: IC 4-1-10-1

Sec. 3. The effective date of this article is July 1, 2006. *(Office of Attorney General for the State; 10 IAC 5-1-3)*

Rule 2. Definitions

10 IAC 5-2-1 “Express consent” defined

Authority: IC 4-1-10-13
Affected: IC 4-1-10-5

Sec. 1. “Express consent” means a specific grant of authority made by an individual allowing a state agency to disclose that individual’s Social Security number. The grant of authority shall:

(1) not be given:

(A) pursuant to or as a condition of a state agency’s services that would otherwise be available to the individual; or

(B) by any person other than the individual to whom the Social Security number has been assigned by the Social Security Administration; and

(2) be:

(A) given in writing;

(B) signed by the individual; and

(C) dated in a legible form as determined by the state agency.

(Office of Attorney General for the State; 10 IAC 5-2-1)

10 IAC 5-2-2 “State law enforcement agency” defined

Authority: IC 4-1-10-13
Affected: IC 4-1-10-4

Sec. 2. “State law enforcement agency” includes the following entities or persons:

(1) The state police department.

(2) The office of attorney general for the state.

(3) The office of the inspector general.

(4) Prosecutors and their deputies.

(5) Other state agencies or entities that conduct investigations relating to the enforcement of state law.

(Office of Attorney General for the State; 10 IAC 5-2-2)

Rule 3. Attorney General’s Discretion

10 IAC 5-3-1 Mitigating factors

Authority: IC 4-1-10-13
Affected: IC 4-1-10; IC 4-1-11

Sec. 1. The attorney general may, in his or her discretion, determine that the release of Social Security numbers was a negligent act and not a knowing, intentional, or reckless act if a state agency or employee establishes that the following provisions, singly or in combination, have been met:

(1) The release of the Social Security numbers is immediately stopped.

(2) Any individuals whose Social Security numbers are disclosed are immediately notified in a timely manner.

(3) The release of the Social Security numbers was as follows:

(A) Unintended.

(B) De minimis and nonsystematic.

(4) The handling of the Social Security numbers was conducted pursuant to a contractual relationship, and the

contract contained a clause requiring the state agency and the contractor to comply with the following:

(A) The release of Social Security number provisions set forth in IC 4-1-10.

(B) The notice of security breach provisions set forth in IC 4-1-11.

(5) The state agency had established reasonable policies and procedures designed to prevent the unauthorized disclosure of individual Social Security numbers.

(6) Corrective measures are initiated to prevent future disclosures under similar circumstances.

(7) Other relevant circumstances as determined by the attorney general.

(Office of Attorney General for the State; 10 IAC 5-3-1)

Rule 4. Notice Requirements

10 IAC 5-4-1 Notification to the attorney general

Authority: IC 4-1-10-13

Affected: IC 4-1-10

Sec. 1. When a state agency becomes aware of a release of Social Security or other personal identifying information, the state agency or employee shall, within two (2) business days of the disclosure, notify the office of attorney general for the state in writing of the following:

(1) The nature of any release of Social Security or other personal identifying information.

(2) The steps taken by the agency or employee to do the following:

(A) Stop the current release.

(B) Notify the individuals affected.

(C) Prevent future releases.

(Office of Attorney General for the State; 10 IAC 5-4-1)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 3, 2006 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, West Conference Room, Fifth Floor, Indianapolis, Indiana the Office of Attorney General for the State will hold a public hearing on proposed new rules concerning the release of Social Security numbers by state agencies.

These proposed rules will encompass definition of terms, mitigating factors to be considered by the Office of the Attorney General in its investigation and notice to prosecutors and state police, and notice requirements regarding Social Security number releases.

10 IAC 5-4 requires a state agency or employee to notify the Office of the Attorney General, in writing and within two business days of a Social Security number disclosure, the nature of any release of Social Security or other personal identifying information, steps taken by the agency or employee to stop said release, steps taken by the agency or employee to notify affected individuals, and steps taken by the agency or

employee to prevent future releases.

This requirement is justified because it provides regulated entities (in this case, state agencies) with guidance on what steps to take when a disclosure occurs, and it gives the Office of the Attorney General an entry point on which to begin its investigation of the matter. If regulated entities are not required to notify the Office of the Attorney General of disclosures, the Office of the Attorney General does not possess any significant means by which to become aware of disclosures. Other requirements imposed by this rule have been added to assist the Office of the Attorney General in its investigation into the disclosure, so that it may accurately analyze the nature of the breach, the person or persons involved, and what types of mitigating factors could or could not be applied before providing notice to prosecutors or the Indiana State Police.

This justification is made based upon the clear intent of the underlying statute and the investigative resources available to the Office of the Attorney General. The Office of the Attorney General did not rely on any data, studies, or analyses beyond that which has been provided above.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jason Thompson

Deputy Attorney General

Office of Attorney General for the State

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule

LSA Document #05-262

DIGEST

Adds 312 IAC 9-3-2.5 to establish a special youth deer hunting season the weekend before the start of the early archery season (October 1), to allow any youth 15 years of age or younger, accompanied by an adult of at least 18 years of age, to be able to take one antlerless deer during this special youth deer season, and to require the youth hunter to possess a valid youth hunting license, to have taken a hunter education course, and to comply with all other deer hunting regulations. Effective 30 days after filing with the Secretary of State.

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

The Indiana Department of Natural Resources (DNR) estimates that the proposed rule will not impose requirements or costs on small businesses. Check-in stations and hunting license vendors may qualify as small businesses under IC 4-22-2.1-4. However, youth hunting licenses that will be sold and deer taken under such a license will be checked in using existing systems for selling other hunting licenses and checking in deer

taken under other types of deer licenses. Other states that have implemented a similar early youth season report that very few additional deer are taken for which check stations will have to collect data. License vendors sell hunting licenses through the DNR's automated licensing system, which electronically transfers data and revenue relating to licenses sold, enabling all reports of that data to be prepared by the DNR.

312 IAC 9-3-2.5

SECTION 1. 312 IAC 9-3-2.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-3-2.5 Hunting deer during special youth season

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-12-1; IC 14-22-12-7

Sec. 2.5. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual youth who is either of the following:

(1) Issued a license to hunt deer under IC 14-22-12-1(a)(24).

(2) Hunting deer under IC 14-22-11-1 or IC 14-22-12-7. As used in this section, "youth" means an individual who is fifteen (15) years of age or younger by the date of the hunt.

(b) The season for hunting deer under this section is two (2) consecutive days beginning on the Saturday immediately before October 1 or as approved annually by the director.

(c) The seasonal limit for hunting deer under this section is one (1) antlerless deer.

(d) A youth who hunts a deer under this section must be:

(1) fifteen (15) years of age or younger; and

(2) accompanied by an adult of at least eighteen (18) years of age.

An adult accompanying the youth hunter must not possess a firearm, bow and arrow, or crossbow while in the field and shall not be required to possess a deer hunting license.

(e) A youth hunter must not hunt deer except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(f) A youth hunter must not hunt deer unless wearing hunter orange. An adult accompanying the youth hunter must wear hunter orange while in the field.

(g) A youth must not hunt a deer under this section with any type of equipment except a firearm or bow and arrow, including a crossbow. A youth must not possess more than one (1) type of equipment to take a deer while in the field.

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

(1) A shotgun:

(A) must have a gauge 10, 12, 16, 20, or .410 bore loaded with a single projectile; and

(B) may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine.

(2) A muzzle loading gun must be .44 caliber or larger, loaded with a bullet at least .357 inch or larger. A muzzle loading handgun must be single shot, .50 caliber or larger, loaded with bullets at least .44 caliber and have a barrel at least twelve (12) inches long. The length of a muzzle loading handgun barrel is determined by measuring from the base of the breech plug, excluding tangs and other projections, to the end of the barrel, including the muzzle crown. A muzzle loading gun must be capable of being loaded only from the muzzle, including both powder and bullet. A muzzle loading gun may be possessed in the field outside lawful shooting hours only if:

(A) for percussion firearms, the cap or primer is removed from the nipple or primer adapter; or

(B) for flintlock firearms, the pan is not primed.

(3) Over-and-under combination rifle-shotguns are prohibited.

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

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

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

(3) Poisoned or explosive arrows are unlawful.

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

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

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

(A) track;

(B) trough;

(C) channel;

(D) arrow rest; or

(E) other device;

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

(j) The following requirements apply to the use of a crossbow under this section:

(1) No youth shall use a crossbow:

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

(B) that does not have a mechanical safety.

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

(k) As used in this section, “crossbow” means a device for propelling an arrow by means of traverse limbs mounted on a stock and a string and having a working safety. The crossbow may be drawn, held, and released by a mechanical device. (Natural Resources Commission; 312 IAC 9-3-2.5)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 2, 2006 at 3:00 p.m., at the Indiana Government Center-South, Conference Center Room 14, 402 West Washington Street, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on a proposed new rule to establish a special youth deer hunting season the weekend before the start of the early archery season (October 1), to allow any youth age 15 years or younger, accompanied by an adult of at least 18 years of age, to be able to take one antlerless deer during this special youth deer season and to require the youth hunter to possess a valid youth hunting license, to have taken a hunter education course, and to comply with all other deer hunting regulations.

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 Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule

LSA Document #05-274

DIGEST

Amends 312 IAC 11-5-2, which governs lawful nonconforming uses for structures subject to licensure under IC 14-26-2 (commonly known as the “Lakes Preservation Act”), to provide greater specificity to the processes used to evaluate lawful nonconforming uses, to specify that the person claiming a lawful nonconforming use has the burden for establishing conformity and provide two years for the submission of documentation, to specify that the Department of Natural Resources has the burden for establishing that a lawful nonconforming use should be terminated if the department contends it poses a nuisance or has been abandoned, and to clarify that a temporary structure can qualify as a lawful nonconforming use and acknowledge that the seasonal removal of a structure does not constitute abandonment. Effective January 1, 2007.

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

The natural resources commission has the authority to adopt the proposed amendments under IC 14-10-2-4, IC 14-15-7-3, and IC 14-26-2-23. The amendments will clarify the treatment of lawful nonconforming uses under IC 14-26-2 and 312 IAC 11 and will not result in an additional requirement or cost under IC 4-22-2-24(d)(3). The amendments will not impose requirements or costs on small businesses under IC 4-22-2.1-5.

312 IAC 11-5-2

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

312 IAC 11-5-2 Lawful nonconforming uses

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

Affected: IC 4-21.5-3-5; IC 4-21.5-3-8; IC 4-21.5-4; IC 14-26-2

Sec. 2. (a) A structure or facility that was lawfully placed before the effective date of:

(1) IC 14-26-2; or

(2) a section of:

(A) 312 IAC 11-3;

(B) 312 IAC 11-4; or

(C) this rule;

including a structure or facility lawfully placed under a section of 310 IAC 6-2 before its repeal, which would be unlawful if placed after that date, is **eligible for qualification under this section as a lawful nonconforming use.**

(b) This subsection governs the establishment of a lawful nonconforming use as follows:

(1) A person who claims a lawful nonconforming use has the burden of proof for establishing:

(A) the existence of the use; and

(B) that the use was lawful;

when the new or amended statutory or rule section became effective. Except as provided in subdivision (2), a use must have been in existence when the new or amended section became effective and not merely at some time before it became effective.

(2) If a rule section that governs the placement of a temporary structure becomes effective outside the boating season, but a temporary structure was used during the previous boating season, the use is considered to have been in existence when the section became effective. As used in this subdivision, the boating season is from April 1 through October 31.

(3) The department may consider the following documentation in determining the existence of a lawful nonconforming use:

(A) Ground level photographs.

(B) Blueprints and engineering drawings.

(C) Pier installation company records.

(D) The department’s division of law enforcement pier

inventories.

(E) CAD drawings.

(F) Aerial photographs.

(G) Deeds.

(H) Plats.

(I) Easement intent.

(J) GPS units and range finders.

(K) USDA aerial photography for historical documentation.

(L) County GIS programs and aerial photography.

(M) Statements from riparian owners and others familiar with the site may also be considered, but typically they are insufficient, in themselves, to meet the burden.

(4) A person who claims a lawful nonconforming use, that was effective before January 1, 2007, must deliver to the department a written request and supporting documentation by January 1, 2009. For a use that is nonconforming as a result of a rule or statutory amendment that becomes effective after January 1, 2007, a person must deliver a written request and supporting documentation within two (2) years after the effective date of the amendment.

(5) A determination that a structure or facility qualifies or does not qualify as a lawful nonconforming use is a determination of status under IC 4-21.5-3-5(a)(5).

(c) This subsection governs the maintenance of or modification to a lawful nonconforming use as follows:

(1) Except as provided in subdivision (2), a lawful nonconforming use may be maintained, but the use cannot be modified unless a person satisfies the requirements of IC 14-26-2 and this article that are in effect at the time of the modification. In performing maintenance under this subdivision, the:

(A) location;

(B) size; and

(C) configuration;

of the use must not be modified.

(2) The department may authorize a modification to a lawful nonconforming use if it determines that the resulting change to the:

(A) location;

(B) size; or

(C) configuration;

would better serve the values promoted by IC 14-26-2 than does the existing lawful nonconforming use.

(d) This subsection governs the removal of a lawful nonconforming use as follows:

~~(b)~~ (1) The director or the director's designee may order the removal of a lawful nonconforming use ~~under subsection (a)~~ if the structure or facility is ~~either~~ any of the following:

~~(b)~~ (A) A nuisance that adversely affects any of the following:

~~(A)~~ (i) Public safety.

~~(B)~~ (ii) Natural resources.

~~(C)~~ (iii) Natural scenic beauty. ~~or~~

~~(D)~~ (iv) The water level of a public freshwater lake.

(B) Abandoned.

~~(2)~~ (C) Modified in a manner for which a license is required under IC 14-26-2 or this rule, but no license has been obtained.

(2) The department has the burden of proof to establish a lawful nonconforming use should be removed under this subsection.

(3) A temporary structure adversely affects public safety under subdivision (1)(A)(i) if the structure is any of the following:

(A) Extended or located more than one hundred seventy-five (175) feet lakeward from the shoreline or waterline, except as provided for Bass Lake in Starke County at 312 IAC 5-6-3.

(B) Submerged or otherwise obscured from the view of a boater or other person using a lake.

(C) In a derelict condition. A structure is in a derelict condition if:

(i) so neglected by the owner that it has become ineffective for the intended purposes; or

(ii) following a reasonable inquiry, the owner of the structure cannot be identified.

(4) Generally, a use is abandoned if not exercised for a period in excess of one (1) year. A person may, however, present evidence of special factors that would reasonably excuse a failure to maintain the use. These factors include the following:

(A) Pending litigation relating to the lawful nonconforming use.

(B) Unusual environmental conditions.

~~(e)~~ (e) IC 4-21.5-3-8 controls an order issued under subsection ~~(b)~~ is controlled by IC 4-21.5-3-8 (d) unless an emergency exists, in which event IC 4-21.5-4 may be applied: applies.

~~(f)~~ (f) Nothing in this rule affects the department's right to seek injunctive or other relief under IC 14-26 or another applicable law. (*Natural Resources Commission; 312 IAC 11-5-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2228; filed May 11, 2004, 9:00 a.m.: 27 IR 3065; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

SECTION 2. SECTION 1 of this document takes effect January 1, 2007.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 24, 2006 at 11:30 a.m., at the District 1 Headquarters, Division of Law Enforcement, 9822 North Turkey Creek Road, Syracuse, Indiana the Natural Resources Commission will hold a public hearing on a proposed amendment to 312 IAC 11-5-2, which

governs lawful nonconforming uses for structures subject to licensure under IC 14-26-2 (commonly known as the "Lakes Preservation Act"), to provide greater specificity to the processes used to evaluate lawful nonconforming uses, to specify that the person claiming a lawful nonconforming use has the burden for establishing conformity and provide two years for the submission of documentation, to specify that the Department of Natural Resources has the burden for establishing that a lawful nonconforming use should be terminated if the department contends it poses a nuisance or has been abandoned, and to clarify that a temporary structure can qualify as a lawful nonconforming use and acknowledge that the seasonal removal of a structure does not constitute abandonment.

The natural resources commission has the authority to adopt the proposed amendments under IC 14-10-2-4, IC 14-15-7-3, and IC 14-26-2-23. The amendments will clarify the treatment of lawful nonconforming uses under IC 14-26-2 and 312 IAC 11 and will not result in an additional requirement or cost under IC 4-22-2-24(d)(3). The amendments will not impose requirements or costs on small businesses under IC 4-22-2-1-5.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule LSA Document #04-182

DIGEST

Adds 326 IAC 3-8 concerning compliance assurance monitoring. Effective 30 days after filing with the Secretary of State.

HISTORY

First Notice: July 1, 2004, Indiana Register (27 IR 3349).

Second Notice: July 1, 2005, Indiana Register (28 IR 3057).

Notice of First Hearing: July 1, 2005, Indiana Register (28 IR 3057).

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

Date of First Hearing: December 7, 2005.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4 until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on July 1, 2005, at 28 IR 3057, the

Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

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

Dominion (DOM)

Eli Lilly and Company (ELC)

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

Comment: Dominion supports incorporation by reference of the federal CAM requirements in 40 CFR 64 with only definition changes to clarify certain internal references. (DOM)

Comment: Dominion supports IDEM's conclusion that a Compliance Response Plan (CRP) should not be included in the rule. (DOM)

Comment: Lilly agrees with IDEM's decision to incorporate the federal CAM rules, 40 CFR 64, with no additional modifications. (ELC)

Response: IDEM appreciates support on this rulemaking effort.

Comment: In 326 IAC 3-8-1, Lilly suggests the following language be added to eliminate potential confusion due to differences in the definition of terms: "**For purposes of this rule, the definition given for a term in 40 CFR 64 shall control in any conflict between 326 IAC 3-4-1 and this rule.**". (Lilly)

Response: IDEM is proposing this rule as an incorporation by reference of the federal regulation at 40 CFR 64 in 326 IAC 3-8-1(c), therefore the definitions in the federal regulation should apply in this state rule. IDEM will review the differences in the definitions in 326 IAC 3-4-1 and 40 CFR 64 and resolve any potential conflicts prior to final adoption of this rule.

Comment: In order to clarify the certification requirements associated with the CAM rule, Lilly suggests the language in 326 IAC 3-4-2 be modified as follows:

Sec. 2 Each report submitted under **rules 1 through 7** of this article shall contain certification of truth, accuracy, and completeness. This certification and any other certification required under this article shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. **Reports submitted under rule 8 of this article shall meet the certification requirements of 326 IAC 2-7-4(f).**

Response: IDEM is not making revisions to 326 IAC 3-4-2 at this time, but will review this suggestion during the rulemaking currently open to make changes to 326 IAC 3.

Comment: Lilly believes the language in 326 IAC 3-8-1(a) could be modified to improve consistency as follows:

Sec. 1. (a) This rule applies to **pollutant-specific emission units at Title V sources which meet the applicability**

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criteria of 40 CFR 64.2(a) unless specifically exempted by in the applicability section of 40 CFR 64.2(b).

Response: IDEM agrees that the suggested language could be misinterpreted and has revised the language to follow the federal language more closely. The new language reads: “**This rule applies to pollutant-specific emission units at Title V sources that meet the applicability criteria of 40 CFR 64.2, except for backup utility units exempt under 40 CFR 64.2(b).**”.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On December 7, 2005, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of a new rule concerning compliance assurance monitoring at 326 IAC 3-8. No comments were made at the first hearing.

326 IAC 3-8

SECTION 1. 326 IAC 3-8 IS ADDED TO READ AS FOLLOWS:

Rule 8. Compliance Assurance Monitoring Requirements

326 IAC 3-8-1 Applicability; incorporation by reference of federal standards

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

Affected: IC 13-11; IC 13-17

Sec. 1. (a) This rule applies to pollutant-specific emission units at Title V sources that meet the applicability criteria of 40 CFR 64.2, except for backup utility units exempt under 40 CFR 64.2(b).

(b) References to:

- (1) “section 70.6(a)(3)(i) of this chapter” shall mean 326 IAC 2-7-5(3)(A);
- (2) “section 70.6(a)(3)(i)(B) of this chapter” shall mean 326 IAC 2-7-5(3)(A)(ii);
- (3) “section 70.6(a)(3)(ii) of this chapter” shall mean 326 IAC 2-7-5(3)(B);
- (4) “section 70.6(a)(3)(iii) of this chapter” shall mean 326 IAC 2-7-5(3)(C);
- (5) “section 70.7(f)(1)(i) of this chapter” shall mean 326 IAC 2-7-9(a)(1);
- (6) “section 70.7(f)(1)(iii) of this chapter” shall mean 326 IAC 2-7-9(a)(3)(A) and 326 IAC 2-7-9(a)(3)(B); and
- (7) “section 70.7(f)(1)(iv) of this chapter” shall mean 326 IAC 2-7-9(a)(3)(C).

(c) The air pollution control board incorporates by reference 40 CFR 64, “Compliance Assurance Monitoring”*.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington D.C. 20401 or are

also available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 3-8-1*)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, 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 a proposed new rule concerning compliance assurance monitoring at 326 IAC 3-8.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Christine Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

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

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204

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

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

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

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule

LSA Document #05-78

DIGEST

Amends 326 IAC 2-6-1, 326 IAC 2-6-3, and 326 IAC 2-6-4

concerning emission reporting requirements. Effective 30 days after filing with the Secretary of State.

HISTORY

First Notice: May 1, 2005, Indiana Register (28 IR 2463).

Second Notice and Notice of First Hearing: September 1, 2005, Indiana Register (28 IR 3667).

Date of First Hearing: December 7, 2005.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4 until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on September 1, 2005, at 28 IR 3667, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from September 1, 2005, through October 3, 2005, on IDEM's draft rule language. IDEM received comments from the following parties:

Alcoa Warrick Operation (AWO)

Improving Kids' Environment (IKE)

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

Comment: The proposed amendments to 326 IAC 2-6-4(a) would require that actual estimated emissions of ammonia and PM_{2.5} be reported in emission statements. A review of the most recent U.S. EPA test methods listing indicates that there are no U.S. EPA test methods in either 40 CFR 51, Appendix M, or 40 CFR 60, Appendix A for measurement of these pollutants. U.S. EPA has specified some areas of Indiana to be non-attainment for PM_{2.5}. However, U.S. EPA acknowledges the lack of available PM_{2.5} test methodology, because it has directed that PM_{2.5} emissions be assumed equal to PM₁₀ emissions for purposes of new source review determinations. Without applicable U.S. EPA test methodology for use in evaluating the quality of provided data, the commenter questions the value of any emissions estimates for these pollutants provided in an emissions statements. Without means for assessing the quality of emissions estimates for these pollutants, the commenter recommends that 326 IAC 2-6-4(a) not be amended at this time. (AWO)

Response: IDEM is required to report these estimated emissions to U.S. EPA under the federal consolidated emission reporting rule (CERR) and has been doing so since 2004. These emissions estimates are also needed for PM_{2.5} inventory and attainment demonstrations for bringing all areas into compliance with the PM_{2.5} National Air Quality Standard (NAAQS). IDEM believes that sources are in a better position to estimate emissions based on their greater knowledge of their own processes. Sources should use the best available information to make these estimates. IDEM has tools available to assist in making these

estimates using percentages by source classification code (SCC). U.S. EPA and IDEM recognize that measuring PM_{2.5} emissions is an evolving science, and that is why only estimates are required.

Comment: The proposed amendments to 326 IAC 2-6-4(c)(1) require that the emissions statement be accompanied by a certification that the information in the emissions statement is accurate based on reasonable estimates. Since there is currently no available U.S. EPA test methodology with which to measure these pollutant emissions, the commenter requests that 326 IAC 2-6-4(c)(1) only require a certification for pollutants that can be measured by a U.S. EPA test method. (AWO)

Response: The rule does not require stack testing for developing emission estimates. Many sources do not test for emissions and rely on mass balance and engineering judgment. IDEM must make these estimates in the absence of source-supplied information. Estimates provided by the source are likely to be more accurate than IDEM estimates. The certification only requires that sources certify that emissions are a "reasonable estimate" using "data available."

Comment: The commenter supports the inclusion of these two pollutants in the rule. It is also well accepted that when companies quantify and report their emissions, it leads to more accurate accounting of emissions and, frequently, reductions. With respect to ammonia and fine particles, better information about emissions of these pollutants will help with development of Indiana's attainment plan for fine particles and other planning efforts and will also enable all stakeholders to track decreases or increases of these pollutants in the future. The commenter acknowledges that U.S. EPA has required states to begin reporting emissions of ammonia and fine particles. (IKE)

Response: IDEM agrees.

Comment: The reporting threshold for sources in LaPorte County should be lowered. LaPorte County has recently been designated a nonattainment area for ozone under Subpart 2 and sources in that county will now have the same reporting requirements as other Subpart 2 ozone nonattainment counties. (IKE)

Response: IDEM agrees.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On December 7, 2005, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 2-6. No comments were made at the first hearing.

326 IAC 2-6-1

326 IAC 2-6-3

326 IAC 2-6-4

SECTION 1. 326 IAC 2-6-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6-1 Applicability

Proposed Rules

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to all of the following:

(1) Sources required to have an operating permit under 326 IAC 2-7, Part 70 Permit Program.

(2) Sources located in the following counties that emit volatile organic compounds (VOC) or oxides of nitrogen (NO_x) into the ambient air at levels equal to or greater than twenty-five (25) tons per year:

(A) Lake.

(B) Porter.

(C) **LaPorte.**

(3) Sources that emit lead into the ambient air at levels equal to or greater than five (5) tons per year.

(b) All sources permitted by the department are subject to section 5 of this rule, additional information requests.

(c) Sources covered by subsection (a) must comply with the compliance schedule in section 3 of this rule. (*Air Pollution Control Board; 326 IAC 2-6-1; filed Nov 12, 1993, 4:00 p.m.: 17 IR 732; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2210*)

SECTION 2. 326 IAC 2-6-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6-3 Compliance schedule

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

Affected: IC 13-15; IC 13-17

Sec. 3. (a) The owner or operator of a source subject to section 1(a) of this rule must submit an emission statement covering the previous calendar year to the department according to the following schedule:

(1) Annually, by July 1, for sources subject to section 1(a)(2) of this rule or with the potential to emit annual emissions greater than or equal to any of the following emission thresholds:

(A) Two thousand five hundred (2,500) tons per year of **any of the following:**

(i) Carbon monoxide.

~~(B) Two thousand five hundred (2,500) tons per year of~~

(ii) Oxides of nitrogen.

~~(C) Two thousand five hundred (2,500) tons per year of~~

(iii) Sulfur dioxide.

~~(D) (B)~~ **(B)** Two hundred fifty (250) tons per year of **either of the following:**

(i) Particulate matter less than or equal to ten (10) micrometers (PM₁₀).

~~(E) Two hundred fifty (250) tons per year of~~ (ii) Volatile organic compounds.

(2) Triennially, by July 1, according to the schedule in subsection (b) for all sources not subject to annual reporting in ~~subdivision~~ **subdivision** (1).

(b) The county schedule for reporting under subsection (a)(2) is as follows:

(1) Starting in 2004, and every three (3) years thereafter, sources located in the following counties must submit an emission statement:

(A) Adams County.

(B) Allen County.

(C) Benton County.

(D) Carroll County.

(E) Cass County.

(F) DeKalb County.

(G) Elkhart County.

(H) Fulton County.

(I) Huntington County.

(J) Jasper County.

(K) Kosciusko County.

(L) LaGrange County.

(M) Lake County.

(N) LaPorte County.

(O) Marshall County.

(P) Miami County.

(Q) Newton County.

(R) Noble County.

(S) Porter County.

(T) Pulaski County.

(U) St. Joseph County.

(V) Starke County.

(W) Steuben County.

(X) Wabash County.

(Y) Wells County.

(Z) White County.

(AA) Whitley County.

(2) Starting in 2005, and every three (3) years thereafter, sources located in the following counties must submit an emission statement:

(A) Blackford County.

(B) Boone County.

(C) Clinton County.

(D) Delaware County.

(E) Fayette County.

(F) Fountain County.

(G) Grant County.

(H) Hamilton County.

(I) Hancock County.

(J) Hendricks County.

(K) Henry County.

(L) Howard County.

(M) Jay County.

(N) Johnson County.

(O) Madison County.

(P) Marion County.

(Q) Montgomery County.

(R) Morgan County.

(S) Parke County.

(T) Putnam County.

- (U) Randolph County.
- (V) Rush County.
- (W) Shelby County.
- (X) Tippecanoe County.
- (Y) Tipton County.
- (Z) Union County.
- (AA) Warren County.
- (BB) Wayne County.

(3) Starting in 2006, and every three (3) years thereafter, sources located in the following counties must submit an emission statement:

- (A) Bartholomew County.
- (B) Brown County.
- (C) Clark County.
- (D) Clay County.
- (E) Crawford County.
- (F) Daviess County.
- (G) Dearborn County.
- (H) Decatur County.
- (I) Dubois County.
- (J) Floyd County.
- (K) Franklin County.
- (L) Gibson County.
- (M) Greene County.
- (N) Harrison County.
- (O) Jackson County.
- (P) Jefferson County.
- (Q) Jennings County.
- (R) Knox County.
- (S) Lawrence County.
- (T) Martin County.
- (U) Monroe County.
- (V) Ohio County.
- (W) Orange County.
- (X) Owen County.
- (Y) Perry County.
- (Z) Pike County.
- (AA) Posey County.
- (BB) Ripley County.
- (CC) Scott County.
- (DD) Spencer County.
- (EE) Sullivan County.
- (FF) Switzerland County.
- (GG) Vanderburgh County.
- (HH) Vermillion County.
- (II) Vigo County.
- (JJ) Warrick County.
- (KK) Washington County.

(c) The department will make available emission statement reporting forms to sources subject to this rule.

(d) Sources subject to this rule may submit their emission statement as follows:

- (1) Electronically. Sources that submit their emission state-

ment electronically must submit to the department a certification that complies with section 4(c)(1) of this rule by the submission deadline.

(2) By mail. The United States Postal Service postmark is the submittal date.

(3) By private carrier. Records of dates of receipt and delivery by the service must be maintained.

(4) By hand delivery to the office of air quality, Indianapolis, Indiana.

(Air Pollution Control Board; 326 IAC 2-6-3; filed Nov 12, 1993, 4:00 p.m.: 17 IR 734; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2212)

SECTION 3. 326 IAC 2-6-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6-4 Requirements

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

Affected: IC 13-15; IC 13-17

Sec. 4. (a) A source subject to section 1(a) of this rule shall report estimated actual emissions in the emission statement of the following pollutants:

- (1) Carbon monoxide (CO).
- (2) Volatile organic compounds (VOC).
- (3) Oxides of nitrogen (NO_x).
- (4) Particulate matter less than or equal to ten (10) micrometers (PM₁₀).
- (5) Sulfur dioxide (SO₂).
- (6) Lead and lead compounds, including any unique chemical substance that contains lead.
- (7) Particulate matter less than or equal to two and five-tenths (2.5) micrometers (PM_{2.5}).**
- (8) Ammonia (NH₃).**

(b) Emissions from processes that are insignificant or trivial activities as defined in 326 IAC 2-7-1(21) and 326 IAC 2-7-1(40) are not required to be reported in an emission statement.

(c) The emission statement submitted by the source must contain, at a minimum, the following information:

(1) Certification by a responsible official that the information in the emission statement is accurate based on reasonable estimates using data available to the preparers and on a reasonable inquiry into records and persons responsible for the operation of the source, and is true, accurate, and complete. The certification shall include the:

- (A) full name;
- (B) title;
- (C) signature;
- (D) date of signature; and
- (E) telephone number;

of the person signing the certification.

(2) Source identification information, to include the following:

- (A) Full name, physical location, and mailing address of the

source.

(B) Source universal transverse mercator (UTM) or latitude and longitude.

(C) North American Industry Classification System (NAICS) code.

(3) Operating data, for each emission unit or emissions group, to include the following:

(A) Percent annual throughput by quarter as defined in section 2 of this rule.

(B) Days per week in operation.

(C) Design capacity.

(D) Hours per day in operation.

(E) Hours per year in operation.

(F) Maximum nameplate capacity.

(4) For reporting purposes, multiple stacks that vent to the atmosphere may be grouped together to reflect any grouping of process units. Stack parameters include the following:

(A) Stack identification.

(B) Stack height and diameter (in feet).

(C) Universal transverse mercator (UTM) or latitude and longitude coordinates.

(D) Exit gas temperature (degrees Fahrenheit).

(E) Exit gas flow rates in cubic feet per minute.

(5) Emissions information for each process, to include the following:

(A) The estimated actual emissions of all pollutants listed in subsection (a) at the process level in tons per year. Actual emission estimates must:

(i) include upsets, downtime, and fugitive emissions; and ~~must~~

(ii) follow an emission estimation method.

Fugitive emissions may be reported as plantwide or grouped together in a logical manner. If control efficiencies are adjusted because of upsets, downtime, and malfunctions, information must be provided about how the control efficiencies are calculated.

(B) Emissions of VOC, ~~and~~ PM₁₀, ~~and~~ PM_{2.5} shall be reported as total VOC, ~~and~~ PM₁₀, ~~and~~ PM_{2.5} emissions, respectively.

(C) Calendar year for the emissions.

(D) Estimated emissions method code provided by the department.

(E) Emission factor, if part of emissions calculation. Acceptable sources of an emission factor include **the following:**

(i) AP-42, "Compilation of Air Pollutant Emission Factors AP-42" as defined at 326 IAC 1-2-20.5.

(ii) Site-specific values accepted by the department and the U.S. EPA.

(iii) Other documentable methodology accepted by the department and the U.S. EPA.

(F) Source classification code (SCC).

(G) Annual process rate (annual throughput) to the extent it is part of emissions calculation.

(H) ~~Ash content~~; If part of emissions calculation, **the**

following:

(i) Ash content.

~~(ii) Sulfur content, if part of emissions calculation.~~

~~(iii) Heat content, if part of emissions calculation.~~

(6) Control equipment information, to include the following:

(A) Capture efficiency.

(B) Current control equipment efficiency percentage unless a controlled emission factor is applied. The actual efficiency should reflect the total control efficiency from all control equipment for each process pollutant. If the actual control efficiency is unavailable, the:

(i) efficiency designed by the manufacturer may be used; ~~or the~~

(ii) control efficiency limit imposed by a permit should be used.

(C) Control equipment identification code.

(d) Nothing in this rule requires stack testing. (*Air Pollution Control Board; 326 IAC 2-6-4; filed Nov 12, 1993, 4:00 p.m.: 17 IR 734; errata, 17 IR 1009; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1566; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2213*)

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 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 proposed amendments to 326 IAC 2-6.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Susan Bem, 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 Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One

North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

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

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule LSA Document #05-166 DIGEST

Amends 326 IAC 8-1-6 to exempt boat manufacturing facilities that are subject to 326 IAC 20-48 and reinforced plastics composites production facilities that are subject to 326 IAC 20-56 from 326 IAC 8-1-6. Effective 30 days after filing with the Secretary of State.

HISTORY

First Notice of Comment Period: July 1, 2005, Indiana Register (28 IR 3056).

Second Notice and Notice of First Hearing: October 1, 2005, Indiana Register (29 IR 214).

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4 until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on October 1, 2005, at 29 IR 214, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from October 1, 2005, through November 3, 2005, on IDEM's draft rule language. IDEM received comments from the following parties:

Elliott Company of Indianapolis, Inc. (ECII)
Following is a summary of the comments received and IDEM's responses thereto:

Comment: We support the proposed change to 326 IAC 8-1-6 so that facilities complying with Rules 48 or 56 are not required to reduce VOC emissions using BACT. These facilities will have already reduced VOC emissions to the extent feasible and this change will reduce costs, uncertainty, and the overall burden of the permitting system. (ECII)

Response: IDEM agrees that facilities that comply with 326 IAC 20-48 or 326 IAC 20-56 to limit emissions of styrene, which is both a hazardous air pollutant and a volatile organic compound (VOC), reduce VOCs to the extent necessary to

satisfy best available control technology (BACT) requirements by using maximum achievable control technology (MACT).

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On December 7, 2005, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 8-1-6. No comments were made at the first hearing.

326 IAC 8-1-6

SECTION 1. 326 IAC 8-1-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-1-6 New facilities; general reduction requirements

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

Sec. 6. New facilities (as of January 1, 1980) **which that:**

- (1)** have potential emissions of **twenty-two and seven-tenths** (22.7) megagrams (**twenty-five** (25) tons) or more per year;
- (2)** **are** located anywhere in the state; **which and**
- (3)** are not otherwise regulated by:
 - (A)** other provisions of this article; (~~326 IAC 8-~~
 - (B)** **326 IAC 20-48; or**
 - (C)** **326 IAC 20-56;**

shall reduce VOC emissions using best available control technology (BACT). (*Air Pollution Control Board; 326 IAC 8-1-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2530*)

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 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 proposed amendments to 326 IAC 8-1-6.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Patricia Troth, Rule Development Section, Office of Air Quality, (317) 233-5681 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

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100 North Senate Avenue
Indianapolis, Indiana 46204
or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

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

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

TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule LSA Document #05-66

DIGEST

Adds 329 IAC 3.1-1-12.5 to provide a mailing address for notifications required in the article. Amends 329 IAC 3.1-1-7, 329 IAC 3.1-1-9, 329 IAC 3.1-7-2, 329 IAC 13-3-1, 329 IAC 13-6-5, 329 IAC 13-7-4, and 329 IAC 13-8-4 to incorporate by reference the July 1, 2005, edition of the federal hazardous waste management regulations in 40 CFR 260 through 40 CFR 273, and the changes to the federal hazardous waste program published on August 5, 2005 (70 FR 45508). Amends 329 IAC 3.1-1-14.1 to eliminate an obsolete fee. Amends 329 IAC 3.1-6-3 to more accurately describe the actual requirements generators of those wastes must follow. Repeals 329 IAC 3.1-7.5. Partially effective 30 days after filing with the Secretary of State and partially effective on September 5, 2006.

HISTORY

First Notice of Comment Period: May 1, 2005, Indiana Register (28 IR 2470).

Second Notice of Comment Period and Notice of First Hearing: October 1, 2005, Indiana Register (29 IR 223).

Date of First Hearing: November 15, 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

Portions of this proposed rule are substantively different from the draft rule published on October 1, 2005, at 29 IR 223. The Indiana Department of Environmental Management (IDEM) is

requesting comment on the following portions of the proposed (preliminarily adopted) rule that are substantively different from the language contained in the draft rule:

SECTION 3: 329 IAC 3.1-1-12.5.

SECTION 6: 329 IAC 3.1-7-2.

This notice requests the submission of comments on the sections of the proposed rule listed above, 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. Comments on additional sections of the proposed rule that the commentor believes are substantively different from the draft rule may also be submitted for the consideration of the board. Mailed comments should be addressed to:

#05-66 [2005 Hazardous Waste Annual Update]

Marjorie Samuel

Office of Land Quality

Indiana Department of Environmental Management

100 North 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 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 January 22, 2006.

Additional information regarding this action may be obtained from Steve Mojonier 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

IDEM requested public comment from October 1, 2005, through October 31, 2005, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On November 15, 2005, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of new rules and amendments to 329 IAC 3.1 and 329 IAC 13. No comments were made at the first hearing.

FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY

Under IC 4-22-2-28, IDEM has estimated that the economic impact of the proposed amendments to rules removing refer-

ences to special waste and industrial waste will be less than five hundred thousand dollars (\$500,000) on the regulated entities. The economic impact analysis for this rule was not submitted to the Legislative Services Agency.

329 IAC 3.1-1-7	329 IAC 3.1-7.5
329 IAC 3.1-1-9	329 IAC 13-3-1
329 IAC 3.1-1-12.5	329 IAC 13-6-5
329 IAC 3.1-1-14.1	329 IAC 13-7-4
329 IAC 3.1-6-3	329 IAC 13-8-4
329 IAC 3.1-7-2	

SECTION 1. 329 IAC 3.1-1-7, AS AMENDED AT 28 IR 2661, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-7 Incorporation by reference

Authority: IC 13-19-3-1; IC 13-22-4
Affected: IC 13-14-8; 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, ~~2003~~ **2005 and amended on August 5, 2005, at 70 FR 45520 through 70 FR 45522.**

(b) When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11.

(c) The following publications are also incorporated by reference:

- (1) 40 CFR 146, revised as of July 1, ~~2003~~ **2005.**
- (2) 40 CFR 60, Appendix A-1, revised as of July 1, ~~2003~~ **2005.**
- (3) 40 CFR 60, Appendix A-2, revised as of July 1, ~~2003~~ **2005.**
- (4) 40 CFR 60, Appendix A-3, revised as of July 1, ~~2003~~ **2005.**
- (5) 40 CFR 60, Appendix A-4, revised as of July 1, ~~2003~~ **2005.**
- (6) 40 CFR 60, Appendix A-5, revised as of July 1, ~~2003~~ **2005.**
- (7) 40 CFR 60, Appendix A-6, revised as of July 1, ~~2003~~ **2005.**
- (8) 40 CFR 60, Appendix A-7, revised as of July 1, ~~2003~~ **2005.**
- (9) 40 CFR 60, Appendix A-8, revised as of July 1, ~~2003~~ **2005.**

(d) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsections (a) through (c). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, ~~Government Printing Office, Washington, D.C. 20402~~ **P.O. Box 371954, Pittsburgh, PA**

15250-7954, or on-line at <http://bookstore.gpo.gov/>. The telephone number for the Government Printing Office is (202) 512-1800 **or toll-free (866) 512-1800.** The incorporated materials are available for public review at the offices of the department of environmental management.

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

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

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

SECTION 2. 329 IAC 3.1-1-9 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-9 Conversion of federal terms

Authority: IC 13-14-8; IC 13-19-3-1
Affected: IC 13-14-8; 40 CFR 260 through 40 CFR 270

Sec. 9. (a) When used in 40 CFR, as adopted in this article, substitute the following unless otherwise indicated:

- (1) "Act" means the Environmental Management Act.
- (2) "Administrator" means the commissioner of the Indiana department of environmental management.
- (3) "Agency" means the Indiana department of environmental management.
- (4) "Director" 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, she, or it, 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.

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- (10) “She” means he, she, or it, without regard to gender.
- (11) “State”, “authorized state”, “approved state”, and “approved program” means Indiana, except at:
- (A) 40 CFR 260.10 in the definitions of “person”, “state”, and “United States”;
 - (B) 40 CFR 262; or
 - (C) 40 CFR 270.2 in the definitions of “approved program” or “approved state”, “director”, “final authorization”, “person”, and “state”.
- (12) “United States” means the state of Indiana.
- (13) “Variance” means exemption.

(b) The following definitions found in 40 CFR 260.10 are excluded from the substitution of “commissioner of the Indiana department of environmental management” for “administrator” or “regional administrator” in subsection (a):

- (1) Administrator.
- (2) Hazardous waste constituent.
- (3) Regional administrator.

(c) The following definitions found in 40 CFR 260.10 are excluded from the substitution of “Indiana department of environmental management” for “environmental protection agency” in subsection (a):

- (1) Administrator.
- (2) EPA region.
- (3) Regional administrator.

(d) The substitution of terms in subsection (a) does not apply in the following portions of 40 CFR 260 through 40 CFR 270 as adopted in this rule:

- (1) 40 CFR 261.6(a)(3)(i)(A).
- (2) 40 CFR 261.6(a)(3)(i)(B).
- (3) 40 CFR 262.11.
- (4) 40 CFR 262.21.**
- ~~(4)~~ **(5)** 40 CFR 262.51.
- ~~(5)~~ **(6)** 40 CFR 262.52.
- ~~(6)~~ **(7)** 40 CFR 262.53. See 329 IAC 3.1-7-2 for additional information.
- ~~(7)~~ **(8)** 40 CFR 262.54. See 329 IAC 3.1-7-2 for additional information.
- (9) 40 CFR 262.60.**
- ~~(8)~~ **(10)** 40 CFR 264.12(a).
- ~~(9)~~ **(11)** 40 CFR 265.12(a).
- ~~(10)~~ **(12)** 40 CFR 270.2.
- ~~(11)~~ **(13)** 40 CFR 270.5.
- ~~(12)~~ **(14)** 40 CFR 270.11(a)(3).
- ~~(13)~~ **(15)** 40 CFR 270.32(b)(2).
- ~~(14)~~ **(16)** 40 CFR 270.32(c).
- ~~(15)~~ **(17)** 40 CFR 270.72(a)(5).
- ~~(16)~~ **(18)** 40 CFR 270.72(b)(5).

(e) In 40 CFR 263, all references to “EPA”, “United States”, and “administrator” are retained. (*Solid Waste Management Board; 329 IAC 3.1-1-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR*

909; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 3. 329 IAC 3.1-1-12.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 3.1-1-12.5 Mailing address for notifications

Authority: IC 13-14-8; IC 13-22

Affected: IC 13-15-11-3; IC 13-16; IC 13-22-12-2; IC 13-22-12-3; IC 13-30-4

Sec. 12.5. Unless otherwise provided elsewhere in this article, notifications required by this article must be submitted to:

**Indiana Department of Environmental Management
Office of Land Quality, Facility Data Analysis Section
Room 1101
100 North Senate Avenue
Indianapolis, IN 46204-2251.**

(*Solid Waste Management Board; 329 IAC 3.1-1-12.5*)

SECTION 4. 329 IAC 3.1-1-14.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-14.1 Fees

Authority: IC 13-14-8; IC 13-22

Affected: IC 13-15-11-3; IC 13-16; IC 13-22-12-2; IC 13-22-12-3; IC 13-30-4

Sec. 14.1. (a) The following definitions apply throughout this section:

- (1) “Boilers and industrial furnaces” or “BIFs” means facilities as defined under “boilers” and “industrial furnaces” in 40 CFR 260.10.
- (2) “Class 2 modification” refers to the modification classification system described under 40 CFR 270.42.
- (3) “Class 3 modification” refers to the modification classification system described under 40 CFR 270.42.
- (4) “Generator” or “LQG” means a person that:
 - (A) during the preceding calendar year:
 - (i) generated in any calendar month more than one thousand (1,000) kilograms of hazardous waste or more than one (1) kilogram of acute hazardous waste;
 - (ii) regardless of a person’s rate of generation, accumulated at any time more than one (1) kilogram of acute hazardous waste; or
 - (iii) regardless of a person’s rate of generation, accumulated at any time more than six thousand (6,000) kilograms of hazardous waste; or
 - (B) generated or accumulated in any calendar month more than one hundred (100) kilograms of spill clean-up material contaminated with acute hazardous waste.
- (5) “Ground water monitoring well” means a device required by a permit condition or applicable rule to monitor the quality of ground water during a twelve (12) month period.
- (6) “Land disposal” includes interim status and permitted hazardous waste landfills and interim status and permitted

hazardous waste surface impoundments.

(7) "Operation" or "operating", for the purpose of this section, means the following:

(A) A hazardous waste treatment, storage, or disposal unit that will close by removing all waste is considered operating if waste is present in the unit as of January 1.

(B) A disposal unit that will close leaving waste in place is considered operating until the unit has permanently stopped receiving waste as of January 1.

(8) "Storage" means the term as defined in 40 CFR 260.10 and includes interim status and permitted hazardous waste storage.

(9) "Treatment" means the term as defined in 40 CFR 260.10 and includes interim status and permitted hazardous waste treatment. The term does not include treatment that is excluded from permitting or interim permitting under 40 CFR 262.34, 40 CFR 261.4, and 40 CFR 261.6.

(10) "Treatment storage disposal" or "TSD" means the term as defined in 40 CFR 260.10.

(b) In accordance with IC 13-22-12-2, hazardous waste fees are as follows:

(1) New permit application fees are as follows:

(A) Land disposal	\$40,600
(B) Incinerator (per unit)	\$21,700
(C) Storage	\$23,800
(D) Treatment (including boilers and industrial furnaces)	\$23,800

(2) Permit renewal and Class 3 modification fees are as follows:

(A) Land disposal	\$34,000
(B) Incinerator (per unit)	\$21,700
(C) Storage	\$17,200
(D) Treatment (including boilers and industrial furnaces)	\$17,200

(3) Class 2 modification fee \$2,250

(4) Annual operation fees are as follows:

(A) Land disposal	\$37,500
(B) Incinerator (per unit)	\$10,000
(C) Storage	\$2,500
(D) Treatment (including boilers and industrial furnaces)	\$10,000
(E) Generator	\$1,565
(F) Post-closure activity	\$1,500
(G) Ground water compliance sampling at active facilities (per well)	\$1,000

(5) ~~Manifest fee~~ \$8

(c) Requirements for application fees are as follows:

(1) The fees must be submitted with the hazardous waste permit application. Hazardous waste permit applications will be denied without the application fee.

(2) The fees are not refundable once staff review of the application has commenced.

(d) The annual operation fee schedule is established in IC 13-22-12 and applies to the following:

(1) Annual operation fees established in IC 13-22-12-3 apply to facilities listed in subsection (b) that:

(A) operate with a permit;

(B) operate under interim status;

(C) are a large quantity generator (LQG); or

(D) otherwise manage hazardous waste subject to regulation under IC 13-22-2.

(2) Hazardous waste annual operation fees begin accruing January 1 of each year. The commissioner shall assess hazardous waste annual operation fees not later than January 15 for the current year's activities. However, this is based on a generator's previous year's activities as defined by the generator.

(3) Hazardous waste management facilities permitted as of January 1 of the assessed year must pay annual operations fees, even if not yet constructed or receiving waste.

(4) No waivers exist for large quantity generators (LQGs).

(5) Permitted TSDs that choose not to manage hazardous waste will be assessed a fee. Fees are assessed for facilities that have the ability to manage hazardous waste.

(6) Permitted treatment and storage facilities that close by removing all waste will not be assessed a post-closure fee because the facility is no longer regulated.

(7) Facilities that are issued a post-closure permit will be assessed the post-closure fee. Landfills will be assessed the fee for the duration of the post-closure period.

(8) A person shall remit a hazardous waste annual operation fee or an installment allowed by subsection (e) to the commissioner:

(A) no more than thirty (30) days after the date the fee is assessed; or

(B) by the date the installment is due.

(9) A person or facility that is described in more than one (1) category under this section shall pay all applicable fees.

(e) Installment payments are established as follows:

(1) The commissioner shall allow a person to remit installments on the annual fee if:

(A) the person determines that a single payment of the entire fee is an undue hardship; and

(B) the commissioner receives written notification requesting consideration of installment payments before January 30 of the invoiced year.

(2) Installments are due ~~on a~~ **on a**:

(A) ~~on a~~ quarterly basis:

(i) February 15;

(ii) May 15;

(iii) August 15; and

(iv) November 15; or

(B) ~~on a~~ semiannual basis:

(i) February 15; and

(ii) August 15.

(3) The commissioner will not send a notice of the installment

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method to the person who notifies in subdivision (1)(B).

(f) In addition to the penalties described under IC 13-30-4, the following will occur:

(1) If a person does not remit a hazardous waste annual operation fee or an installment established under subsection (e)(2) **within:**

(A) ~~within~~ sixty (60) days after the date the fee is assessed; or

(B) ~~within~~ thirty (30) days after the date the installment is due;

the person shall be assessed a delinquency charge equal to ten percent (10%) of the hazardous waste annual operation fee or ten percent (10%) of the installment, whichever is applicable.

(2) The delinquency charge is due and payable:

(A) sixty (60) days after the date the hazardous waste annual operation fee is assessed; or

(B) thirty (30) days after the date the installment is due.

(3) If a person does not remit the hazardous waste annual operation fee or an installment established by the commissioner and any applicable delinquency charge **within:**

(A) ~~within~~ ninety (90) days after the date the hazardous waste annual operation fee is assessed; or

(B) ~~within~~ sixty (60) days after the date the installment is due;

the commissioner may revoke the person's permit.

(4) Before revoking a person's permit ~~pursuant to under~~ subdivision (3), the commissioner shall send a written notice by certified mail that: ~~describes:~~

(A) **describes** what fees and delinquency charge are due; and

(B) indicates that the commissioner may revoke the person's permit for nonpayment thirty (30) days after receipt of the notice.

(g) The fees and delinquency charges collected under this section must be:

(1) payable to the department; and

(2) deposited in the environmental management permit operation fund established under IC 13-15-11-3.

(Solid Waste Management Board; 329 IAC 3.1-1-14.1; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1094; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 5. 329 IAC 3.1-6-3, AS AMENDED AT 28 IR 2663, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-3 Indiana additions; listing of hazardous waste

Authority: IC 13-14-8; IC 13-22-2-4

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

Sec. 3. (a) In addition to the lists of hazardous waste incorporated by reference in section 1 of this rule, the following chemical munitions are acute hazardous wastes:

(1) GA (Ethyl-N, N-dimethyl phosphoramidocyanidate).

(2) GB (Isopropyl methyl phosphonoflouridate).

(3) H, HD (Bis(2-chloroethyl) sulfide).

(4) HT (sixty percent (60%) HD and forty percent (40%) T (Bis[2(2-chloroethyl-thio)ethyl]ester)).

(5) L (Dichloro(2-chlorovinyl)arsine).

(6) VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate).

The ~~above listed~~ chemical munitions **in subdivisions (1) through (6)** have the Indiana hazardous waste number I001 and are subject to all requirements for acute hazardous wastes in this article except as provided in subsection (b).

~~(b) The commissioner may establish alternative requirements for wastes listed in this section and for wastes derived from those listed wastes.~~

(b) A generator may accumulate as much as fifty-five (55) gallons of waste derived from a waste listed in subsection (a)(6) at or near any point of generation where wastes initially accumulate, when that waste is managed in accordance with all other requirements of 40 CFR 262.34(c)(1). *(Solid Waste Management Board; 329 IAC 3.1-6-3; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2663)*

SECTION 6. 329 IAC 3.1-7-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-7-2 Exceptions and additions; generator standards

Authority: IC 13-14-8; IC 13-22-2-4

Affected: IC 13-22-2; IC 13-22-4-3.1; 40 CFR 262

Sec. 2. Exceptions and additions to federal standards for generators are as follows:

(1) Delete 40 CFR 262.12(a) and substitute "A generator who has not received an EPA identification number may obtain one by applying on forms provided by the commissioner. Upon receipt of the completed forms, an EPA identification number will be assigned."

~~(2) In addition to the requirements of 40 CFR 262; Subpart B and the appendix to 40 CFR 262; the generator shall enter the EPA hazardous waste number for each waste on the Uniform Hazardous Waste Manifest (EPA Form 8700-22) as follows:~~

~~(A) Enter the four (4) digit EPA hazardous waste number from 40 CFR 261 that identifies the waste in item "P2" of the manifest form or item "R2" of the continuation sheet (EPA Form 8700-22A).~~

~~(B) If multiple EPA hazardous waste numbers apply, enter the hazardous waste numbers as follows:~~

~~(i) Enter the one (1) EPA hazardous waste number that identifies the most distinctive or most hazardous property of the waste in item "P2" of the manifest form or item "R2" of the continuation sheet.~~

(ii) The remaining EPA hazardous waste numbers may be entered in item "J" of the manifest form or item "S" of the continuation sheet.

(C) For nonhazardous or unregulated waste that may be included in the shipment, enter "NONE" in item "P".

(3) (2) In addition to the requirements of 40 CFR 262.40, a generator shall keep the reports required by IC 13-22-4-3.1 on file for at least three (3) years after submission to the department.

(4) (3) Delete 40 CFR 262.41 dealing with biennial reporting and substitute section 14 of this rule.

(5) (4) In 40 CFR 262.42(a)(2), delete "in the Region in which the generator is located".

(6) (5) Delete 40 CFR 262.43 dealing with additional reporting and substitute section 15 of this rule.

(7) (6) In 40 CFR 262.53 and 40 CFR 262.54, references to the "EPA" are retained. A copy of the notification of intent to export, which must be submitted to the EPA, must also be submitted to the Office of Land Quality, Indiana Department of Environmental Management, P.O. Box 7035, Indianapolis, Indiana 46207-7035.

(8) (7) Exception reports required from primary exporters pursuant to 40 CFR 262.55 must be filed with the Regional Administrator of the EPA and the commissioner.

(9) (8) Delete 40 CFR 262.56 dealing with annual reports for exports and substitute section 16 of this rule.

(10) (9) In 40 CFR 262.57(b), the reference to the "administrator" is retained. The commissioner may also request extensions of record retention times for hazardous waste export records.

(10) **The amendments to 40 CFR 262.34 that implement the National Environmental Performance Track Program for hazardous waste generators that are Performance Track members, published in the Federal Register at 69 FR 21753 through 69 FR 21754 on April 22, 2004, are incorporated by reference.**

(Solid Waste Management Board; 329 IAC 3.1-7-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1875)

SECTION 7. 329 IAC 13-3-1, AS AMENDED AT 28 IR 2666, SECTION 7, IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-3-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 279.10; 40 CFR 761.20(e)

Sec. 1. (a) The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 2 of this

rule, this article applies to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in 40 CFR 261, Subpart C, revised as of July 1, 2003: **2005**.

(b) Mixtures of used oil and hazardous waste must be handled as follows:

(1) For mixtures of used oil with a listed hazardous waste, the following shall apply:

(A) Mixtures of used oil and hazardous waste that is listed in 40 CFR 261, Subpart D, revised as of July 1, 2003: **2005**, are subject to regulation as hazardous waste under 329 IAC 3.1 rather than as used oil under this article.

(B) Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261, Subpart D, revised as of July 1, 2003: **2005**. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from U.S. Environmental Protection Agency Publication SW-846, as defined in 329 IAC 10-2-197.1, to show showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261, Appendix VIII, revised as of July 1, 2003: U.S. Environmental Protection Agency SW-846 is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238: Request document number 955-001-00000-1: **2005**. The rebuttable presumption does not apply to the following:

(i) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(3), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(ii) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261, Subpart C, revised as of July 1, 2003: **are 2005**, is subject to 329 IAC 3.1.

(3) Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 CFR 261.5, revised as of July 1, 2003: **2005**, are subject to regulation as used oil under this article.

(c) Materials containing or otherwise contaminated with used oil must be handled as follows:

(1) Except as provided in subdivision (2), materials contain-

ing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

- (A) are not used oil and thus not subject to this article; and
- (B) if applicable, are subject to the hazardous waste regulations under 329 IAC 3.1.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this article.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this article.

(d) Mixtures of used oil with products must be handled as follows:

(1) Except as provided in subdivision (2), mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this article.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this article once the used oil and diesel fuel have been mixed. **Prior to Before** mixing, the used oil is subject to the requirements of 329 IAC 13-4.

(e) Materials derived from used oil must be handled as follows:

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, such as re-refined lubricants, are:

- (A) not used oil and thus are not subject to this article; and
- (B) not solid wastes and are thus not subject to the hazardous waste regulations under 329 IAC 3.1 as provided in 40 CFR 261.3(c)(2)(A), revised as of July 1, ~~2003~~ **2005**.

(2) Materials produced from used oil that are burned for energy recovery, such as used oil fuels, are subject to regulation as used oil under this article.

(3) Except as provided in subdivision (4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

- (A) not used oil and thus are not subject to this article; and
- (B) ~~are~~ solid wastes and thus are subject to the hazardous waste regulations under 329 IAC 3.1 if the materials are listed or identified as hazardous waste.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this article.

(f) Wastewater, the discharge of which is subject to regulation under either Section 402 or 307(b) of the Clean Water Act, 33 U.S.C. 1342 or 33 U.S.C. 1317(b), respectively, including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of this article. As used in this

subsection, "de minimis quantities of used oils" means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility must be handled as follows:

(1) Used oil mixed with crude oil or natural gas liquids, such as in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of this article. The used oil is subject to the requirements of this article **prior to before** the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent (1%) used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point **prior to before** crude distillation or catalytic cracking are exempt from the requirements of this article.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this article provided that the used oil constitutes less than one percent (1%) of the crude oil feed to any petroleum refining facility process unit at any given time. **Prior to Before** insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(4) Except as provided in subdivision (5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this article only if the used oil meets the specification of section 2 of this rule. **Prior to Before** insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as an article of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this article. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, such as by pouring collected used oil into the wastewater treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this article.

(h) Used oil produced on vessels from normal shipboard operations is not subject to this article until it is transported ashore.

(i) Used oil containing less than fifty (50) parts per million PCB is subject to the requirements of this article unless, because of dilution, it is regulated under 329 IAC 4.1 as a used oil containing PCB at fifty (50) parts per million or greater. Used oil containing PCB subject to the requirements of this article may also be subject to the prohibitions and requirements found in 329 IAC 4.1.

(j) Used oil containing PCB at concentrations of fifty (50) parts per million or greater is not subject to the requirements of this article, but is subject to regulation under 329 IAC 4.1. No person may avoid these provisions by diluting used oil containing PCB, unless otherwise specifically provided for in this article or in 329 IAC 4.1.

(k) The use of waste oil that contains equal to or greater than two (2) parts per million PCB as a sealant, coating, or dust control agent is prohibited. Prohibited uses include, but are not limited to, **the following**:

- (1) Road oiling.
- (2) General dust control.
- (3) Use as a pesticide or herbicide carrier. ~~and~~
- (4) Use as a rust preventative on pipes.

(l) In addition to any applicable requirements under 329 IAC 13-8 and 329 IAC 13-9, marketers and burners of used oil who market, process, or distribute in commerce for energy recovery, used oil containing equal to or greater than two (2) parts per million PCB must comply with section 4 of this rule.

(m) 40 CFR 261 and 40 CFR 761 are available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. (*Solid Waste Management Board*; 329 IAC 13-3-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1494; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 238; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3978; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2666)

SECTION 8. 329 IAC 13-6-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-6-5 Rebuttable presumption for used oil

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 279.44

Sec. 5. (a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), the used oil transporter must determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below one thousand (1,000) parts per million.

- (b) The transporter must make this determination by:
- (1) testing the used oil; or
 - (2) applying knowledge of the halogen content of the used oil

in light of the materials or processes used.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261, Subpart D, **revised as of July 1, 2005**. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by ~~using an analytical method from EPA publication SW-846, Third Edition, to show~~ showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261, Appendix VIII, ~~EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1.~~ **revised as of July 1, 2005**. The rebuttable presumption does not apply to the following:

- (1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(3), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.
- (2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Records of analyses conducted or information used to comply with this section must be maintained by the transporter for at least three (3) years. (*Solid Waste Management Board*; 329 IAC 13-6-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1500; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 9. 329 IAC 13-7-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-7-4 Rebuttable presumption for used oil

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 279.53

Sec. 4. (a) To ensure that used oil managed at a processing or re-refining facility is not hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), the owner or operator of a used oil processing or re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below one thousand (1,000) parts per million.

- (b) The owner or operator must make this determination by:
- (1) testing the used oil; or
 - (2) applying knowledge of the halogen content of the used oil

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in light of the materials or processes used.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261, Subpart D, **revised as of July 1, 2005**. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by ~~using an analytical method from EPA publication SW-846, Third Edition, to show~~ **showing** that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261, Appendix VIII, ~~EPA publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1.~~ **revised as of July 1, 2005**. The rebuttable presumption does not apply to the following:

- (1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling agreement to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.
- (2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(Solid Waste Management Board; 329 IAC 13-7-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1506; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 10. 329 IAC 13-8-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-8-4 Rebuttable presumption for used oil

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 279.63

Sec. 4. (a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of 329 IAC 13-3-1(b)(1)(B), a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below one thousand (1,000) parts per million.

(b) The used oil burner must determine if the used oil contains above or below one thousand (1,000) parts per million total halogens by:

- (1) testing the used oil;
- (2) applying knowledge of the halogen content of the used oil in light of the materials or processes used; or
- (3) if the used oil has been received from a processor or refiner subject to regulation under 329 IAC 13-7, using

information provided by the processor or re-refiner.

(c) If the used oil contains greater than or equal to one thousand (1,000) parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261, Subpart D, **revised as of July 1, 2005**. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by ~~using an analytical method from EPA publication SW-846, Third Edition, to show~~ **showing** that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261, Appendix VIII, ~~EPA publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1.~~ **revised as of July 1, 2005**. The rebuttable presumption does not apply to the following:

- (1) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(c), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.
- (2) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Records of analyses conducted or information used to comply with this section must be maintained by the burner for at least three (3) years. *(Solid Waste Management Board; 329 IAC 13-8-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1510; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 11. 329 IAC 3.1-7.5 IS REPEALED.

SECTION 12. **SECTIONS 1, 2, 5, and 10 of this document take effect September 5, 2006.**

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 February 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 proposed new rules and amendments to rules at 329 IAC 3.1 and 329 IAC 13.

The purpose of this hearing is to receive comments from the public prior to 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 Mojonier, 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, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Assistant Commissioner
Office of Land Quality

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule LSA Document #05-114

DIGEST

Adds 405 IAC 1-14.5-27 to reduce Medicaid rate increases for HIV nursing facilities. Adds 405 IAC 1-14.6-23 to reduce Medicaid rate increases for nursing facilities. *NOTE: Under IC 4-22-2-40, LSA Document #05-114, printed at 28 IR 3655, was recalled by the Office of the Secretary of Family and Social Services and resubmitted for publication. Effective 30 days after filing with the Secretary of State.*

405 IAC 1-14.5-27 **405 IAC 1-14.6-23**

SECTION 1. 405 IAC 1-14.5-27 IS ADDED TO READ AS FOLLOWS:

405 IAC 1-14.5-27 Limitation to Medicaid rate increases for HIV nursing facilities

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 27. Notwithstanding all other provisions of this rule,

for the period January 1, 2006, through June 30, 2007, HIV nursing facility rates that have been calculated under this rule shall be reduced by five dollars (\$5) per resident per day. (Office of the Secretary of Family and Social Services; 405 IAC 1-14.5-27)

SECTION 2. 405 IAC 1-14.6-23 IS ADDED TO READ AS FOLLOWS:

405 IAC 1-14.6-23 Limitation to Medicaid rate increases for nursing facilities

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 23. Notwithstanding all other provisions of this rule, for the period January 1, 2006, through June 30, 2007, nursing facility rates that have been calculated under this rule shall be reduced by five dollars (\$5) per resident per day. (Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-23)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 26, 2006 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 rule amendments concerning Medicaid reimbursement methodology for nursing facilities.

In accordance with public notice requirements established at 42 CFR 447.205, Section 1902(a)(13)(A) of the Social Security Act, and IC 4-22-2-24(d), the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning (OMPP) publishes this notice of proposed changes to methods and standards governing reimbursement policy for nursing facilities.

OMPP proposes to modify the reimbursement methodology to reduce rates for nursing facilities, including HIV nursing facilities. Nursing facility rates will be calculated according to current rule methodology, and then decreased by five dollars per resident per day; this rule will be in effect between January 1, 2006, and June 30, 2007. These changes are necessary to curb the state's high growth rate of Medicaid spending and to stay within available appropriations. An emergency rule enacting this proposed rule will be adopted and take effect on January 1, 2006.

Nursing facilities currently receive an annual review of daily rates paid for by the Medicaid program. Historically, this review has increased daily rates, on average, by about five percent. The estimated total reduction in state and federal expenditures for this rule is \$22.8 million in state fiscal year 2006 and \$45.7 million in state fiscal year 2007 for a total of \$68.5 million over the remainder of the biennium.

Copies of the proposed rule and this notice are now available and may be inspected by contacting the Director of the local county Division of Family Resources office, except in Marion

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County, where public inspection may be made at 402 West Washington Street, Room W382, Indianapolis, Indiana. Copies of the proposed rules are available on the Internet at www.mslcindy.com. Interested parties without Internet access should contact Myers and Stauffer, LLC at (800) 877-6927 to obtain copies of proposed rules.

All parties interested in the rule are invited to attend the hearing and offer public comments. In lieu of attendance at the hearing, written comments may be sent to: IFSSA, Attention: Karen Filler, 402 W. Washington Street, Room W382, P.O. Box 7083, Indianapolis, IN 46207-7083. Correspondence should be identified in the following manner: "COMMENT RE: LSA Document #05-114 PROPOSED CHANGES TO NURSING FACILITY REIMBURSEMENT SYSTEM". All written comments concerning the rule received by OMPP will be available for public inspection at the Office of Medicaid Policy and Planning, 402 West Washington Street, Room W382, Indianapolis, IN 46204.

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 #05-192

DIGEST

Adds 410 IAC 28 to establish reporting of any death or serious complication of a patient by physicians who perform a surgical treatment for the treatment of morbid obesity. Effective 30 days after filing with the Secretary of State.

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

1. Estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.

The Indiana State Department of Health (ISDH) estimates at least 30 physicians perform surgical treatments for treatment of morbid obesity in Indiana.

2. Estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.

Precise costs estimates are difficult to make because of variances in organizational structure and employee compensation schedules among the various providers. The ISDH expects that some of these functions are already performed by the centers, which will decrease the additional time or cost to comply with the rule. The following are the estimated annual costs resulting from the proposed rule:

The reporting required by the proposed rule is based on a physician's postsurgical monitoring of patients for whom the physician provided surgical treatment for morbid obesity. The rule will not impact that monitoring. The rule does require, however, that those physicians report any deaths or serious complications on those patients.

In 2003, Indiana hospitals reported over 2,500 surgical treatments for morbid obesity (bariatric procedures). There has been an increase in the number of surgeries reported over the last six years. The data do not indicate which procedures might qualify as a surgery requiring reporting of death or significant complication. For purposes of projecting costs, we assume 3,000 surgeries annually for the surgical treatment of morbid obesity in Indiana.

Nationally, surgical procedures have a death rate of between 0.8 percent and 8 percent (in 2003, Indiana hospitals reported 7 deaths and 2,540 bariatric surgeries for a death rate of less than 0.3 percent) and a complication rate of approximately 5 percent requiring immediate intervention. If those rates are applied to the projected 3,000 surgeries requiring reporting, we project the following number of reports:

Period Covered	Surgeries (assuming 1 percent death rate)	Deaths (assuming 5 percent complication rate)	Serious Complications (assuming 5 percent complication rate)	Total Reports
7/1/2006 to 12/31/2006	1500	15	75	90
1/1/2007 through 12/31/2007	3000	30	150	180
1/1/2008 through 12/31/2008	3000	30	150	180
1/1/2009 through 12/31/2009	3000	30	150	180
1/1/2010 through 12/31/2010	3000	30	150	180
Total	13,500	135	675	810

The ISDH estimates the time to prepare the required data report to be one (1) hour or less. The completion of the form may

involve physician's time as well as medical records staff or nursing staff. The average estimated cost for each report is \$50.

The annual reporting costs for physicians subject to reporting requirements are projected to be \$9,000 based on the above assumptions.

3. Estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule.

Based upon the data and estimates presented, the total annual economic impact going forward on an annual basis will \$9,000 exclusive of inflationary factors. The individual physician's cost will depend on the number of patients treated and the incidence of death or serious complications.

4. Statement justifying any requirement or cost that is imposed on small businesses by the rule; and not expressly required by the statute authorizing the agency to adopt the rule; or any other state or federal law.

IC 16-40-3 requires physicians who perform surgical treatments for the treatment of morbid obesity to report deaths or serious complications to the ISDH. Additionally, IC 16-40-3 as added sets forth the requirements for agency rules. The ISDH believes the proposed rules are within the requirements established at IC 16-40-3.

5. Regulatory Flexibility Analysis

A. Establishment of less stringent compliance or reporting requirements for small businesses.

IC 16-40-3 makes no provisions for waiving the reporting requirements or changing the reporting requirements provided in the law.

B. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

IC 16-40-3 established the reporting requirements for physicians and provides no provisions for waiving or changing those requirements.

C. Consolidation or simplification of compliance or reporting requirements for small businesses.

The rules drafted provide for the minimum amount of data needed to fulfill the requirements of the law. There are no other reporting requirements imposed by the proposed rule.

D. Establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.

IC 16-40-3 mandates reporting of data. It does not regulate the performance of surgical procedures for the treatment of morbid obesity.

E. Exemption of small businesses from part or all of the requirements or costs imposed by the rule.

The statute provides no waiver or exemption for the reporting of deaths or serious complications after surgical treatment for the treatment of morbid obesity.

Conclusion:

SEA 360 amended IC 16-40, which requires physicians who provide surgical treatment for the treatment of morbid obesity to report deaths and serious complication to the ISDH. The rules do not change medical practice for monitoring patients after the provision of surgical treatment for the treatment of morbid obesity, only the reporting of defined events after that

surgical treatment. The statute provides no waiver or exemption for the reporting of deaths or serious complications after surgical treatment for the treatment of morbid obesity.

410 IAC 28

SECTION 1. 410 IAC 28 IS ADDED TO READ AS FOLLOWS:

ARTICLE 28. REPORTING OF COMPLICATIONS FROM SURGICAL TREATMENT OF MORBID OBESITY

Rule 1. Definitions

410 IAC 28-1-1 Applicability

Authority: IC 16-40-3-5

Affected: IC 16-40-3

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana State Department of Health; 410 IAC 28-1-1*)

410 IAC 28-1-2 "Body mass index" defined

Authority: IC 16-40-3-5

Affected: IC 16-40-3

Sec. 2. "Body mass index" means weight in kilograms divided by height in meters squared. (*Indiana State Department of Health; 410 IAC 28-1-2*)

410 IAC 28-1-3 "Complication" defined

Authority: IC 16-40-3-5

Affected: IC 16-40-3

Sec. 3. "Complication" means an additional medical problem that develops during or following a procedure, treatment, or illness. (*Indiana State Department of Health; 410 IAC 28-1-3*)

410 IAC 28-1-4 "Department" defined

Authority: IC 16-40-3-5

Affected: IC 16-40-3

Sec. 4. "Department" means the Indiana state department of health. (*Indiana State Department of Health; 410 IAC 28-1-4*)

410 IAC 28-1-5 "Morbid obesity" defined

Authority: IC 16-40-3-5

Affected: IC 16-40-3

Sec. 5. "Morbid obesity" means a body mass index of at least either of the following:

(1) Thirty-five (35) kilograms per meter squared, with comorbidity or coexisting medical conditions such as any of the following:

(A) Hypertension.

(B) Cardiopulmonary conditions.

(C) Sleep apnea.

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(D) Diabetes.

(2) Forty (40) kilograms per meter squared without comorbidity.

(Indiana State Department of Health; 410 IAC 28-1-5)

410 IAC 28-1-6 "Physician" defined

Authority: IC 16-40-3-5

Affected: IC 16-40-3; IC 25-22.5

Sec. 6. "Physician" means a person licensed under IC 25-22.5. (Indiana State Department of Health; 410 IAC 28-1-6)

410 IAC 28-1-7 "Serious complication" defined

Authority: IC 16-40-3

Affected: IC 16-40-3

Sec. 7. "Serious complication" includes, but is not limited to, the following:

(1) Serious and potentially serious complications of bariatric surgery as follows:

Applicable Description
Codes

ICD-9-CM

INTRAOPERATIVE COMPLICATIONS

998.2	Organ injuries
998.2	Blood vessel lacerations
998.11	Heavy bleeding requiring the use of blood or blood product transfusions
997.1	Intraoperative myocardial infarction/cardiac arrest
997.02	Intraoperative stroke
997.01	Intraoperative cerebral hypoxia
995.4	Life threatening reaction to anesthesia
995.0	Other severe medication reactions
999.4	Anaphylactic shock due to serum/transfusion

PERIOPERATIVE COMPLICATIONS

997.2	Deep vein thrombosis
415.11	Pulmonary embolism
998.59	Wound infection
998.3	Wound dehiscence
998.12	Wound site hematoma
998.13	Wound site seroma
518.5	Pulmonary insufficiency/respiratory distress

518.4	Pulmonary edema
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POSTOPERATIVE COMPLICATIONS

536.1	Pouch dilatations
552.3, 553.3	Hiatal hernia
996.59	Slippage
560 - 560.9	Intestinal obstruction requiring hospitalization, and/or surgery, and/or leading to:
276.5	dehydration

998.0	shock
997.5	prerenal failure
997.3	aspiration pneumonia
276 - 276.9	Electrolyte imbalance
996.60	Port infections
998.59	Subphrenic abscess
997.4	Stomal stenosis or occlusion
537.89	Stomach rupture
996.79	Gastric band erosions
530.81	Gastroesophageal reflux
530.11	Esophagitis
530.0	Achalasia, aperistalsis of esophagus, megaesophagus
574 - 574.9	Cholelithiasis/Choledocholithiasis
577.0	Pancreatitis
552.21,	Incisional hernia
553.21	
552.1, 553.1	Umbilical hernia
552.9, 553.9	Internal hernia
998.31	Staple line disruption
996.5 or	Leaks from staple breakdown
998.31	
534 - 534.9	Marginal ulcers
998.6	Persistent postoperative fistula
567 - 567.9	Peritonitis
280 - 281.9	Iron-deficiency anemia/other deficiency anemia
733.0	Osteoporosis leading to:
733.1 -	pathologic fracture
733.19	
579.3	Hypoglycemia secondary to excessive pancreatic stimulation
260, 261,	Protein malnutrition
262	
579.2	Blind loop syndrome

(2) A complication that requires hospitalization.

(3) A medical procedure to treat the complication.

(Indiana State Department of Health; 410 IAC 28-1-7)

410 IAC 28-1-8 "Surgical treatment" defined

Authority: IC 16-40-3-5

Affected: IC 16-40-3

Sec. 8. "Surgical treatment" means any of the following procedures or DRG groupings:

Reporting of Deaths or Complications from Morbid Obesity Surgeries

Applicable codes

CMS DRG

288 O.R. Procedures for Obesity

APR-DRG

403 Procedures for Obesity
ICD-9-CM 2005, Procedure Codes

43 Incision and excision of stomach

43.0 Gastrostomy

43.19 Other gastrostomy (excludes PEG)

43.41 Endoscopic excision or destruction of lesion or tissue of stomach

43.42 Local excision of other lesion or tissue of stomach

43.89 Other (partial gastrectomy with bypass gastrogastrostomy)

44 Other operations on stomach

44.31 High gastric bypass

44.38 Laparoscopic gastroenterostomy (Roux-en-Y)

44.39 Other gastroenterostomy (open approach Roux-en-Y)

44.5 Revision of gastric anastomosis

44.6 Other repair of stomach

44.68 Laparoscopic gastroplasty (banding, VBG)

44.69 Other (repair of stomach NOS)

44.9 Other operations on stomach

44.93 Insertion of gastric bubble/balloon obsolete

44.94 Removal of gastric bubble/balloon obsolete

44.95 Laparoscopic gastric restrictive procedure

44.96 Laparoscopic revision of gastric restrictive procedure

44.97 Laparoscopic removal of gastric restrictive devices

44.98 (Laparoscopic) adjustment of size of adjustable gastric restrictive device

45 Incision, excision, and anastomosis of intestine

45.62 Other partial resection of small intestine

46 Other operations on intestines

46.73 Suture of laceration of small intestine, except duodenum

46.79 Other repair of intestine (duodenoplasty)

46.9 Other operations on intestines

46.93 Revision of anastomosis of small intestine

86.8 Other repair and reconstruction of skin and subcutaneous tissue

86.83 Size reduction plastic operation (liposuction, other reduction of adipose tissue)

Current Procedural Terminology (CPT) Codes

15831 Excision, excessive skin and subcutaneous tissue (including lipectomy, paniclectomy); abdomen (abdominoplasty)

15876 Liposuction, head and neck

15877 Liposuction, trunk

15878 Liposuction, upper extremity

15879 Liposuction, lower extremity

43644 Laparoscopy, surgical, gastric restrictive pro-

cedure; with gastric bypass and Roux-en Y gastroenterostomy (roux limb 150 cm or less)

43645 Laparoscopic, gastric restrictive surgery, with gastric bypass and Roux-en Y gastroenterostomy (roux limb 150 cm or less) with small bowel reconstruction to limit absorption

43842 Gastric restrictive procedure, without gastric bypass; vertical-banded gastroplasty (VBG)

43843 Gastric restrictive procedure, other than vertical-banded gastroplasty

43845 Biliopancreatic diversion with duodenal switch

43846 Gastric restrictive surgery, with gastric bypass for morbid obesity; with short limb (150 cm or less) Roux-en Y gastroenterostomy

43847 Gastric restrictive surgery, with gastric bypass and Roux-en Y gastroenterostomy (roux limb 150 cm or less) with small bowel reconstruction to limit absorption

43848 Revision of gastric restrictive procedure for morbid obesity (separate procedure)
(Indiana State Department of Health; 410 IAC 28-1-8)

Rule 2. Reporting Requirements

410 IAC 28-2-1 Application of rule

Authority: IC 16-40-3-5

Affected: IC 16-40-3

Sec. 1. This rule applies to physicians who perform a surgical treatment for the treatment of morbid obesity.
(Indiana State Department of Health; 410 IAC 28-2-1)

410 IAC 28-2-2 Reporting

Authority: IC 16-40-3-5

Affected: IC 16-40-3

Sec. 2. A physician who performs a surgical treatment for the treatment of morbid obesity shall do the following:

(1) Monitor the patient for five (5) years following the patient's surgery.

(2) Report to the department any:

(A) death; or

(B) serious complication of the patient.

(Indiana State Department of Health; 410 IAC 28-2-2)

410 IAC 28-2-3 Report content

Authority: IC 16-40-3-5

Affected: IC 16-40-3

Sec. 3. (a) A physician who performs a surgical treatment for the treatment of morbid obesity shall report to the department the following information regarding the patient:

(1) Date of birth.

(2) Gender.

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- (3) Race.
- (4) Ethnicity.
- (5) County of residence at the time of the surgical treatment for the treatment of morbid obesity.

(b) A physician shall report to the department the following medical information regarding the surgical treatment for the treatment of morbid obesity:

- (1) The date of the surgical treatment for the treatment of morbid obesity.
- (2) Diagnoses.
- (3) Existing comorbidities at the time of the surgery.
- (4) Body mass index at the time of surgery.
- (5) Surgical procedures performed.
- (6) The facility where the surgery was performed

(c) A physician shall report to the department the following medical information regarding the death or serious complication of the patient:

- (1) The date of the event.
- (2) If death, the cause of death.
- (3) If a serious complication, the type of serious complication.
- (4) Hospitalization associated with the death or serious complication, including the following:
 - (A) The length of the stay.
 - (B) Discharge status.
- (5) Procedures performed to treat the serious complication.

(d) A physician shall report to the department using forms provided by the department. (*Indiana State Department of Health; 410 IAC 28-2-3*)

410 IAC 28-2-4 Release of reports

Authority: IC 16-40-3-5
Affected: IC 5-14-3; IC 16-40-3

Sec. 4. (a) The reports made under this article are public records subject to public inspection under IC 5-14-3.

(b) The department may not release any information contained in the reports that the department determines may reveal the patient's identity. (*Indiana State Department of Health; 410 IAC 28-2-4*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 24, 2006 at 2:00 p.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 rule to establish reporting of any death or serious complication of a patient by physicians who perform a surgical treatment for the treatment of morbid obesity.

These rules are designed to meet the statutory mandate of IC 16-40-3-5. Requirements not expressly required by these statutes have not been imposed.

Copies of these rules are now on file at the Public Health Preparedness 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 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Proposed Rule
LSA Document #05-104

DIGEST

Adds 675 IAC 28 to relocate all National Fire Protection Association (NFPA) Standards directly adopted by the Commission into one article (NFPA 10, NFPA 11, NFPA 12, NFPA 15, NFPA 17, NFPA 17A, NFPA 25, NFPA 33, NFPA 34, NFPA 37, NFPA 50, NFPA 50B, NFPA 51, NFPA 51B, NFPA 52, NFPA 59, NFPA 59A, NFPA 72, NFPA 82, NFPA 86, NFPA 385, NFPA 407, NFPA 704, NFPA 1123, and NFPA 2001). Effective 30 days after filing with the Secretary of State.

675 IAC 13-1-4	675 IAC 22-2.2-9
675 IAC 13-1-5	675 IAC 22-2.2-10
675 IAC 13-1-9.5	675 IAC 22-2.2-12
675 IAC 13-1-9.6	675 IAC 22-2.2-13
675 IAC 13-1-22	675 IAC 22-2.2-15
675 IAC 13-1-27	675 IAC 22-2.2-16
675 IAC 13-1-28	675 IAC 22-2.2-17
675 IAC 22-2.2-3	675 IAC 22-2.2-18
675 IAC 22-2.2-4	675 IAC 22-2.2-21
675 IAC 22-2.2-5	675 IAC 22-2.2-23
675 IAC 22-2.2-6	675 IAC 22-2.2-24
675 IAC 22-2.2-7	675 IAC 22-2.2-25
675 IAC 22-2.2-8	675 IAC 28

SECTION 1. 675 IAC 28 IS ADDED TO READ AS FOLLOWS:

ARTICLE 28. NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) STANDARDS

Rule 1. NFPA Standards

675 IAC 28-1-1 Purpose

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. The purpose of this rule is to locate all currently adopted editions of NFPA Standards in one (1) article. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-1*)

675 IAC 28-1-2 NFPA 10; standard for portable fire extinguishers

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 2. (a) That certain standard, being titled NFPA 10, Standard for Portable Fire Extinguishers, 2002 edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 10 are not adopted, are not enforceable, and are for information only:

- (1) NFPA 30A.
- (2) NFPA 32.
- (3) NFPA 96.
- (4) NFPA 120.
- (5) NFPA 122.
- (6) NFPA 241.
- (7) NFPA 302.
- (8) NFPA 303.
- (9) NFPA 408.
- (10) NFPA 410.
- (11) NFPA 418.
- (12) NFPA 430.
- (13) NFPA 498.
- (14) NFPA 1192.
- (15) NFPA 1194.
- (16) ASTM D5391.
- (17) CGA C-1.
- (18) NPCA Hazardous Materials Identification System Revised, Implementational Manual, 1981.
- (19) ANSI/UL 8.
- (20) ANSI/UL 154.
- (21) ANSI/UL 299.
- (22) ANSI/UL 626.
- (23) ANSI/UL 711.
- (24) ANSI/UL 1093.
- (25) ANSI/UL 1803.
- (26) ANSI/UL 2129.
- (27) CAN/ULC-S503.
- (28) CAN/ULC-S504.
- (29) CAN/ULC-S507.
- (30) CAN/ULC-S508.
- (31) CAN/ULC-S512.
- (32) Title 49.

(c) The following documents referenced in NFPA 10 are adopted and are enforceable:

- (1) NFPA 13, as adopted in 675 IAC 13-1-8.

- (2) NFPA 14, as adopted in 675 IAC 13-1-9.
- (3) NFPA 58, as adopted in 675 IAC 22-2.2-14.
- (4) NFPA 86, as adopted in section 31 of this rule.
- (5) NFPA 407, as adopted in section 36 of this rule.
- (6) NFPA 704, as adopted in section 38 of this rule.

(d) Delete Section 1.1 and substitute the following: Scope. The provisions of this standard apply to the selection, installation, inspection, maintenance, and testing of portable extinguishing systems.

(e) Delete Section 1.2 in its entirety.

(f) Amend Section 1.3.1 to read as follows: Portable fire extinguishers used to comply with this standard shall be listed and labeled.

(g) Delete Section 1.5.4 without substitution.

(h) Delete Section 1.5.8 without substitution.

(i) Amend Section 1.6(2) to read as follows: Hazardous materials shall be identified in accordance with NFPA 704. Hazardous materials shall be classified in accordance with chapter 27 of the Indiana Fire Code.

(j) Amend Chapter 3 as follows:

(1) Amend the following definitions to read as follows:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

HALOGENATED AGENTS means halogenated (clean) agents referenced in this standard are the following types:

(A) Halons. Bromochlorodifluoromethane (Halon 1211), bromotrifluoromethane (Halon 1301), and mixtures of Halon 1211 and Halon 1301 (Halon 1211/1301).

NOTE: Halon 1211 and Halon 1301 are included in the "Montreal Protocol on Substances that Deplete the Ozone Layer", signed September 16, 1987. In compliance with national regulations, production of halons ceased on January 1, 1994.

(B) Halocarbons. Halocarbon agents include hydrochlorofluoro-carbon (*HCFC), hydrofluorocarbon

(HFC), perfluorocarbon (PFC), and fluorodiodocarbon (FIC) type agents.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

MAINTENANCE means a thorough examination of the fire extinguisher and any necessary repair.

(2) Add the following definitions:

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

FIRE CODE means the Indiana Fire Code.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as incorporated by reference and amended in 675 IAC 22-2.3.

INSPECTION AUTHORITY means the authority having jurisdiction.

TRAINED means one who has undergone the instructions necessary to design, install, and perform the maintenance and recharge service.

(k) Delete the text of Section 4.1 and substitute the following: Extinguishers shall be suitable for the anticipated growth and character of the fire, construction, and occupancy of the individual property or premises, the vehicle or hazard to be protected, and ambient-temperature conditions. Selection of the class, size, number, and location of extinguishers shall be as specified in the Indiana Fire Code.

(l) Delete Section 3.2.6 in its entirety without substitution.

(m) Delete the text of Section 4.3.2 and substitute "See section 904.11.5 of the Indiana Fire Code".

(n) Delete Section 4.4 in its entirety.

(o) Amend Section 5.1.1 to read as follows: The minimum required number of fire extinguishers needed to protect a property shall be determined as specified in the Indiana Fire Code.

(p) Amend Section 5.1.2 to read as follows: Fire extinguishers shall be provided for the protection of the occupancy hazard as required by the Indiana Building Code (675 IAC 13) and the fire code.

(q) Delete Section 5.1.2.1 without substitution.

(r) Delete Section 5.1.2.3 without substitution.

(s) In Section 5.1.2.4, delete the first sentence.

(t) Delete Section 5.1.3 without substitution.

(u) Amend the third sentence of Section 6.1.2 to read as follows: A trained person shall service the fire extinguishers once every year, as outlined in section 6.3.

(v) Amend Section 6.3.4.1 to read as follows:

6.3.4.1* Fire extinguisher shells that pass the applicable six (6) year requirement of 6.3.3 shall have the test information recorded on a suitable metallic label or equally durable material, a minimum size of two (2) inches by three and one-half (3½) inches (5.1 cm × 8.9 cm).

The label shall be affixed to the shell by means of a heatless process. These labels shall be self-destructive when removal from a fire extinguisher is attempted. These labels shall include the following information:

(1) Month and year the test was performed, indicated by a perforation, such as by a hand punch.

(2) Name or initials of the person performing the test and the name of the agency performing the test.

6.3.4.1.1 In addition to having a label affixed to the shell, rechargeable dry chemical fire extinguishers shall have an internal legible marking to indicate the following:

(1) Month and year the maintenance was performed.

(2) Name or initials of person performing the maintenance and the name of the agency.

If a label is used for the above marking, it shall be of material that is component-listed for that purpose.

(w) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards reference therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-2*)

675 IAC 28-1-3 NFPA 11; standard for low-, medium-, and high-expansion foam

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 3. (a) Standard for Low-, Medium-, and High-Expansion Foam, NFPA 11, 2005 edition, published by National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101 is

adopted by reference except as revised hereafter.

(b) The following documents referenced in NFPA 11 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 11A, NFPA 16, NFPA 24, NFPA 1150, and NFPA 1901.
- (2) ANSI B1.20.1, B16.1, B16.3, B16.4, B16.5, B16.9, B16.11, and B16.25.
- (3) ASTM A53, A105, A106, A135, A182, A216, A234, A312, A395, A795, and SI 10.
- (4) AWS D10.9.
- (5) API 650.
- (6) IEEE 45.
- (7) IMO Safety of life at Sea SOLAS Regulations II-2/4.3 and 4.3.5.
- (8) UL 162.
- (9) Notes: (2) and (3) in Table 5.2.5.2.2.

(c) The following documents referenced in NFPA 11 are adopted and are enforceable:

- (1) NFPA 13, as adopted in 675 IAC 13-1-8.
- (2) NFPA 15, as adopted in section 8 of this rule.
- (3) NFPA 20, as adopted in 675 IAC 13-1-10.
- (4) NFPA 70, as adopted in 675 IAC 17.
- (5) NFPA 72, as adopted in section 28 of this rule.

(d) Delete the last sentence of Section 1.2, and substitute to read as follows: For alternate materials, methods, and design see the General Administrative Rules (675 IAC 12-6-11).

(e) Delete subsection 1.4.1 in its entirety and substitute “See 675 IAC 12-4-9”.

(f) Delete subsection 1.4.2 in its entirety without substitution.

(g) Delete subsection 1.4.3 in its entirety without substitution.

(h) Amend the following definitions in Chapter 3 to read as follows:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and

enforce the rules of the commission.

LABELED. Equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED. Equipment or materials included in a list published by an organization engaged in product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(i) Add the following definitions to Chapter 3 as follows: **DIVISION OF FIRE AND BUILDING SAFETY** means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

NFPA 70, National Electrical Code means the Indiana Electrical Code (675 IAC 17).

TRAINED means one who has undergone the instructions necessary to design, install, and perform the maintenance and recharge service.

(j) Delete subsection 4.2.1.5 in its entirety without substitution.

(k) Amend subsection 4.2.1.6 to read as follows: Water supply or premixed solution shall be protected against freezing.

(l) Delete subsection 4.3.2.1 in its entirety and substitute: **Storage Facilities.** Foam concentrates and equipment shall be stored in an accessible location not exposed to the hazard they protect. If housed, they shall be in a noncombustible structure. Off-premises supplies shall be of the proper type for use in the systems of the given installation. At the time of a fire, these off-premises supplies shall be accumulated in sufficient quantities, before placing the equipment in operation, to ensure uninterrupted foam production at the design rate for the required period of time.

(m) Amend subsection 4.3.2.5.1 to read as follows: The consumption rates shall be based on the percentage concentrate used in the system design (e.g., three percent (3%) or six percent (6%) or other, if so listed).

(n) Delete subsection 4.7.1.3 without substitution.

(o) Insert subsection 4.8.1 **Fixed Systems.** These systems are complete installations in which foam is piped from a central foam station, discharging through fixed delivery outlets to the hazard to be protected. Any required pumps

are permanently installed.

(p) Insert subsection 4.8.2 Semifixed Systems. These systems are the type in which the hazard is equipped with fixed discharge outlets connected to piping that terminates at a safe distance. The fixed piping installation might or might not include a foam maker. Necessary foam-producing materials are transported to the scene after the fire starts and are connected to the piping.

(q) Insert subsection 4.8.3 Mobile Systems. These systems include any foam-producing unit that is mounted on wheels and that is self-propelled or towed by a vehicle. These units can be connected to a suitable water supply or can utilize a premixed foam solution.

(r) Insert subsection 4.8.4 Portable Systems. These systems are the type in which the foam-producing equipment and materials, hose, etc., are transported by hand.

(s) Delete subsection 4.9.2.3 without substitution.

(t) Delete subsection 4.9.2.4 without substitution.

(u) Delete subsection 4.9.2.5.1 without substitution.

(v) Delete subsection 4.9.2.7 in its entirety and substitute: Where automatic shutdown is required, an alarm condition shall remain until manually reset.

(w) Amend Section 5.2.4.3.2 by deleting the “,” between “approved” and “for”.

(x) Amend Section 5.2.5.1.3 by inserting “securely” before “attached”.

(y) Amend Section 5.2.5.1.5 by inserting “a” before “seal”.

(z) Amend Section 5.2.6.4 by inserting “as specified in 675 IAC 12-6-11” after “testing laboratories”.

(aa) Delete Chapter 6 and substitute the following: Plans and specifications shall be filed as required by the General Administrative Rules (675 IAC 12).

(bb) Amend Section 7.3.3.3 by inserting “a” between “as” and “diesel”.

(cc) Delete subsection 7.3.4 in its entirety without substitution.

(dd) Amend Section 7.3.4.2 by inserting “.” at the end of each sentence for items (1), (2), and (3).

(ee) Delete subsection 7.5.4.1 without substitution.

(ff) Amend Section 8.5.2 by deleting “in the opinion of the authority having jurisdiction”.

(gg) Delete Section 8.7.2.1.1 in its entirety without substitution.

(hh) Amend Section 8.10.2.3 by deleting “with the approval of the authority having jurisdiction”.

(ii) Amend Section 8.11.4.3 by deleting “acceptable to” and substituting “approved by”.

(jj) Amend Section 8.17.1.2.2 by deleting “acceptable to” and substituting “approved by”.

(kk) Amend Section 9.1.1 by deleting “where required by the authority having jurisdiction”.

(ll) Delete Section 9.12.1.1 in its entirety without substitution.

(mm) Amend Section 10.3.1 to read as follows: The completed system shall be tested by trained personnel.

(nn) Amend Section 10.3.2 to read as follows: The tests shall be adequate to determine that the system has been properly installed and that it functions as intended.

(oo) Delete in Section 11.1.6, “competent” and substitute “trained”.

(pp) Chapter 2 and the appendices are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-3*)

675 IAC 28-1-4 NFPA 12; standard on carbon dioxide extinguishing systems

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 4. (a) Standard on Carbon Dioxide Extinguishing Systems, NFPA 12, 2005 Edition, published by National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101 is adopted by reference except as revised hereafter.

(b) The following documents referenced in NFPA 12 are not adopted, are not enforceable, and are for information purposes only:

(1) ASME B 31.1.

(2) ANSI/IEEE C 2.

(3) MNBV/ANSI Z535.

(4) API/ASME, Code for Unfired Pressure Vessels for Petroleum Liquids and Gases.

(5) ASTM A53.

- (6) ASTM A106.
- (7) ASTM A120.
- (8) ASTM A182.
- (9) CGA G6.2.
- (10) CSA C22.1.
- (11) Title 46, Code of Federal Regulations, Part 58.20.
- (12) Title 46, Code of Federal Regulations, Part 72.
- (13) Title 49, Code of Federal Regulations, Parts 171-190 (DOT).
- (14) Bureau of Mines Bulletins 503 and 627 (DOT).

(c) The following documents referenced in NFPA 12 are adopted and are enforceable:

- (1) NFPA 70, as adopted in 675 IAC 17.
- (2) NFPA 72, as adopted in section 28 of this rule.

(d) Delete Section 1.1.2 in its entirety without substitution.

(e) Amend subsection 1.2.2 to read as follows: For alternate materials, methods, and design, see the General Administrative Rules (675 IAC 12-6-11).

(f) Amend Section 1.2.3 to read as follows: Design, installation, inspection, and maintenance shall be performed by trained persons only.

(g) Delete Section 1.3 in its entirety without substitution.

(h) Amend the following definitions in Chapter 3 to read as follows:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LABELED. Equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED. Equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate

standards or has been tested and found suitable for use in a specified manner.

(i) Add in Section 1-3, the following definitions to read as follows:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

NFPA 70, National Electric Code means the Indiana Electrical Code (675 IAC 17).

TRAINED means one who has undergone the instructions necessary to design, install, and perform the maintenance and recharge service.

(j) Delete subsection 4.3.1.3.2 in its entirety without substitution.

(k) Amend subsection 4.3.3.6.2 by deleting “(1) When persons not familiar with the systems and their operation are present in a protected space (2)” and substitute “(1)”. Delete the “s” in “conditions”.

(l) Delete subsections 4.4.1 and 4.4.2 and substitute the following: Plans and specifications shall be filed in accordance with the General Administrative Rules (675 IAC 12).

(m) Delete subsections 4.4.3 and 4.4.4 and substitute the following: The completed system shall be tested. Only listed or approved equipment and devices shall be used in the system and shall perform as designed and in accordance with this standard.

(n) Delete, in subsection 4.5.2, Exception No. 1 without substitution. Delete “(2)” and substitute “(1)”. Delete “(3)” and substitute “(2)”.

(o) In subsection 4.5.5.1 delete “unless specifically waived by the authority having jurisdiction” without substitution.

(p) In subsection 4.5.5.2 delete “unless specifically waived by the authority having jurisdiction” without substitution.

(q) Delete subsection 4.6.1.2 in its entirety without substitution.

(r) Amend subsection 4.6.1.3 to read as follows: Both main and reserve supplies for fixed storage systems shall be permanently connected to the piping and arranged for easy changeover.

(s) Delete subsection 4.6.5.2.2 without substitution.

(t) Amend subsection 4.6.6.1.1 to read as follows: Pressure containers exceeding five (5) cubic feet in volume shall be made and marked in accordance with the rules of construction of the Boiler and Pressure Vessel Board (680

IAC 1-4-1).

(u) Amend subsection 4.7.2.1 by adding a sentence to the end of the section to read as follows: The system shall be designed and installed to accommodate the seismic forces as required by the Indiana Building Code (675 IAC 13).

(v) Amend subsection 4.8.3.2 by deleting “competent” and substituting “trained”.

(w) Amend subsection 4.8.3.7.2 by deleting “competent” and substituting “trained”.

(x) Amend subsection 5.3.2.3 by deleting “recognized” and substituting “approved”.

(y) Delete subsection 5.4.2.2.1 in its entirety without substitution.

(z) Delete subsection 6.2.1.4 in its entirety without substitution.

(aa) Delete subsection 6.2.1.5 in its entirety without substitution.

(bb) Amend subsection 6.6.1.2 to read as follows: The system shall be designed for automatic operation.

(cc) Delete Chapter 7 in its entirety without substitution.

(dd) Amend subsection 8.1.2 to read “Only approved standpipe systems shall be installed.”.

(ee) Amend subsection 8.1.3 to read as follows: Standpipe systems shall be installed and maintained in accordance with the requirements in Chapters 4, 5, and 6.

(ff) Amend Section 8.2 to read as follows: Standpipe systems may be used to protect hazards included in Chapters 4, 5, and 6.

(gg) Delete Section 8.3 in its entirety without substitution.

(hh) Delete Section 8.4 in its entirety without substitution.

(ii) Amend the first sentence in subsection 6-2.6 to read as follows: System design shall comply with Chapters 5 and 6, except as described in 9.3.6.1 through 9.3.6.4.2.

(jj) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-4*)

675 IAC 28-1-5 (Reserved)**675 IAC 28-1-6 (Reserved)****675 IAC 28-1-7 (Reserved)****675 IAC 28-1-8 NFPA 15; standard for water spray fixed systems for fire 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. 8. (a) That certain document, being titled NFPA 15-Standard for Water Spray Fixed Systems for Fire Protection, 2001 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 15 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 16.
- (2) NFPA 18.
- (3) NFPA 22.
- (4) NFPA 24.
- (5) NFPA 214.
- (6) ANSI/ASME B1.20.1.
- (7) ANSI B16.1.
- (8) ANSI B16.3.
- (9) ANSI B16.4.
- (10) ANSI B16.5.
- (11) ANSI B16.9.
- (12) ANSI B16.11.
- (13) ANSI B16.18.
- (14) ANSI B16.22.
- (15) ANSI B16.25.
- (16) ANSI B36.10M.
- (17) ANSI B36.19M.
- (18) ANSI C2.
- (19) ASTM A53.
- (20) ASTM A135.
- (21) ASTM A182.
- (22) ASTM A234.
- (23) ASTM A312.
- (24) ASTM A536.
- (25) ASTM A795.
- (26) ASTM B75.
- (27) ASTM B88.
- (28) ASTM B251.
- (29) ASTM D2996.
- (30) ASTM E380.
- (31) ASTM F1173.
- (32) AWS A5.8.
- (33) AWS B2.1.

(c) The following documents referenced in NFPA 15 are adopted and are enforceable:

- (1) NFPA 13, as adopted in 675 IAC 13-1-8.
- (2) NFPA 20, as adopted in 675 IAC 13-1-10.
- (3) NFPA 25, as adopted in section 12 of this rule.
- (4) NFPA 51B, as adopted in section 20 of this rule.
- (5) NFPA 70, as adopted in 675 IAC 17.
- (6) NFPA 72, as adopted in section 28 of this rule.

(d) Amend Chapter 3 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

FLAMMABLE AND COMBUSTIBLE LIQUIDS. See the Indiana Fire Code.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(2) Add the following definitions:

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means that division of the Indiana Department of Homeland Security.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

FIRE CODE means the Indiana Fire Code.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference in section 2.3 of this rule.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

(e) In subsection 3.2.5, delete the definition **SHOULD** in its entirety without substitution.

(f) Delete Section 4.3 in its entirety without substitution.

(g) Delete subsection 4.4.10 in its entirety without substitution.

(h) Amend subsection 6.3.2.4 to read as follows: Tapping or drilling of load-bearing structural members shall be in accordance with the Indiana Building Code (675 IAC 13).

(i) Amend subsection 7.1.5 to read as follows: Other design objectives requiring different protection shall be permitted in accordance with 675 IAC 12-6-11.

(j) Delete Chapter 8 and substitute to read: Plans and hydraulic calculations shall be submitted in accordance with 675 IAC 12-6.

(k) Delete Section 10.1 without substitution.

(l) Amend Section 12.1.4 by deleting “conform to the applicable requirements of the standards of the National Fire Protection Association listed in Chapter 2” and substituting “in accordance with the rules of the commission”.

(m) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-8*)

675 IAC 28-1-9 NFPA 17 standard for dry chemical extinguishing systems

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 9. (a) Standard for Dry Chemical Extinguishing Systems, NFPA 17, 2002, published by National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101 is adopted by reference except as revised hereafter.

(b) The following documents referenced in NFPA 17 are not adopted, are not enforceable, and are for information purposes only:

- (1) ASTM A53.
- (2) ANSI C-2.
- (3) ANSI/ASME B31.1.
- (4) UL 300.
- (5) UL 1254.
- (6) Title 29, Code of Federal Regulations.

(c) The following documents referenced in NFPA 17 are adopted and are enforceable:

- (1) NFPA 70, as adopted in 675 IAC 17.
- (2) NFPA 72, as adopted in section 28 of this rule.
- (3) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

Proposed Rules

(d) Add a sentence to Section 1.2 to read as follows: For alternate materials, methods, and design, see the General Administrative Rules (675 IAC 12-6-11).

(e) Delete Section 1.3 in its entirety without substitution.

(f) Amend the following definitions in Chapter 3 to read as follows:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety, or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(g) Add the following definitions to Chapter 3 to read as follows:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

TESTING LABORATORY means an independent nationally recognized testing laboratory or other organization listed in the General Administrative Rules (675 IAC 12-6-11).

(h) Delete subsection 3.2.6 in its entirety without substitution.

(i) Delete Section 4.2 in its entirety without substitution.

(j) In Section 4.5.2, delete the text and substitute “The piping (types) shall be listed or labeled for the intended use.”.

(k) Amend Section 4.6.1 to read as follows: The type of dry chemical used in the system shall not be changed unless proved to be changeable by a testing laboratory and

recommended by the manufacturer of the equipment.

(l) Amend Section 4.6.3 to read as follows: **CAUTION:** Types of dry chemicals shall not be mixed. Mixtures of certain dry chemicals will generate dangerous pressures and will form lumps.

(m) Delete subsection 4.9.1 in its entirety without substitution.

(n) Delete subsection 4.9.2 in its entirety without substitution.

(o) Delete subsection 5.7.2.1 in its entirety without substitution.

(p) Delete subsection 5.7.2.2 in its entirety without substitution.

(q) Delete Chapter 8 in its entirety without substitution.

(r) In Section 9.3.2, delete “UL 300” and substitute “the Indiana Mechanical Code (675 IAC 18)”.

(s) Delete subsection 9.3.4.3 in its entirety without substitution.

(t) Delete subsection 9.3.5.2 and substitute as follows: For other specific details, see the Indiana Mechanical Code (675 IAC 18).

(u) Delete subsection 9.9.3.1.

(v) Delete Section 9.10 in its entirety without substitution.

(w) Delete Sections 10.1 and 10.2 and substitute to read as follows: Plans and specifications shall be filed in accordance with the General Administrative Rules (675 IAC 12).

(x) Delete subsection 10.3.1 in its entirety without substitution.

(y) Amend Section 10.4 by deleting “qualified” and substituting “trained”.

(z) Delete subsection 10.4.3.1 in its entirety without substitution.

(aa) Delete subsection 10.4.3.5 in its entirety without substitution. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-9*)

675 IAC 28-1-10 NFPA 17A; standard for wet chemical extinguishing systems

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 10. (a) Standard for Wet Chemical Extinguishing

Systems, NFPA 17A, 2002 Edition, published by National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101 is adopted by reference except as revised hereafter.

(b) The document, UL 300, referenced in NFPA 17A is not adopted, is not enforceable, and is for information purposes only.

(c) The following documents have been adopted and are enforceable:

- (1) NFPA 70, as adopted in 675 IAC 17.
- (2) NFPA 72, as adopted in section 28 of this rule.

(d) Add a sentence to Section 1.2 to read as follows: For alternate materials, methods, and design, see the General Administrative Rules (675 IAC 12-6-11).

(e) Amend Section 1.7 by inserting “in the design, installation, and servicing of pre-engineered wet chemical systems” between “trained” and “shall”.

(f) Delete Section 1.4 in its entirety without substitution.

(g) Amend the following definitions in Chapter 3 to read as follows:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LISTED. Equipment or materials included in a list published by an organization engaged in product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(h) Add the following definitions to Chapter 3 to read as follows:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

NFPA 70 means the Indiana Electrical Code (675 IAC

17).

(i) Delete subsection 4.4.3.5 in its entirety without substitution.

(j) Amend Section 4.7 by deleting “or the requirements of the authority having jurisdiction”.

(k) Delete subsection 5.1.1 in its entirety without substitution.

(l) Amend subsection 5.4.3 by adding “to severe weather conditions or” after “subjected”.

(m) Amend subsection 5.4.4 to read as follows: Where excessive climatic or mechanical exposures are expected, suitable enclosures or guards shall be provided.

(n) Delete subsections 5.6.1.1 through 5.6.1.3 in their entirety without substitution.

(o) Delete Sections 6.1 through 6.3 in their entirety and substitute to read as follows: Plans and specifications shall be filed in accordance with the General Administrative Rules (675 IAC 12).

(p) Amend subsection 6.4.2 by deleting “approved” and substituting “released”.

(q) Amend subsection 6.4.3 by deleting “Where required by the authority having jurisdiction, the approval” and substituting “Approval”.

(r) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-10*)

675 IAC 28-1-11 (Reserved)

675 IAC 28-1-12 NFPA 25; standard for the inspection, testing, and maintenance of water-based fire protection systems

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 12. (a) That certain document, being titled NFPA 25-Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2002 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and same is hereby adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 25 are not adopted, are not enforceable, and are for information

purposes only:

- (1) NFPA 13D.
- (2) NFPA 16.
- (3) NFPA 22.
- (4) NFPA 110.
- (5) NFPA 307.
- (6) NFPA 409.
- (7) NFPA 1962.
- (8) ASTM D3359.

(c) The following documents referenced in NFPA 25 are adopted and are enforceable:

- (1) NFPA 11, as adopted in section 3 of this rule.
- (2) NFPA 13, as adopted in 675 IAC 13-1-8.
- (3) NFPA 15, as adopted in section 8 of this rule.
- (4) NFPA 20, as adopted in 675 IAC 13-1-10.
- (5) NFPA 72, as adopted in section 28 of this rule.

(d) Amend Section 1.1 in the fifth and sixth sentences by deleting “generally accepted practices” and substituting “the applicable rules of the commission”.

(e) Amend Section 1.2 by deleting the last sentence without substitution.

(f) Amend Section 1.3 by deleting the last sentence and substituting “See 675 IAC 12-11.”.

(g) Amend Chapter 3 as follows:

(1) Amend the following definitions to read as follows:
APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety, or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

QUALIFIED: See Qualified Individual.

(2) Add the following definitions:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana

Department of Homeland Security created pursuant to IC 10-19-2.

FIRE CODE means the Indiana Fire Code.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference in 675 IAC 22-2.3 and amended.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

OWNER means a corporation, firm, partnership, association, organization, and any other group acting as a unit, or a person who has legal title to any structure or premises with or without accompanying actual possession thereof, and shall include the duly authorized agent or attorney, a purchaser, devisee, fiduciary, and any person having a vested or contingent interest in the premises in question.

QUALIFIED INDIVIDUAL means a person having successfully completed a course of instruction related to the equipment being installed, serviced, or repaired. Such instruction shall be provided by the manufacturer of the equipment or their authorized representative.

(h) Delete subsection 4.1.2.3 and substitute the following:
These tasks shall be performed by qualified individuals.

(i) Delete subsection 4.1.2.4 without substitution.

(j) Amend subsection 4.1.3 to read as follows: The owner or occupant shall notify the servicing fire department and the alarm receiving facility before testing/shutting down a system or its supply. The notification shall include the purpose for the shutdown, the system or component involved, and the estimated time of shutdown. The servicing fire department shall be notified when the system is returned to service.

(k) Delete subsection 4.1.3.1 without substitution.

(l) Delete subsection 4.1.3.2 without substitution.

(m) Delete subsection 4.1.3.3 without substitution.

(n) Amend Section 4.1.4.1 by deleting “maintenance personnel or a qualified contractor” and substituting “individuals”.

(o) Delete subsection 4.1.4.2 without substitution.

(p) Amend Section 4.1.5 by deleting “evaluation of the fire protection system for their capability to protect the new occupancy, use, or materials” and substituting “compliance

with the applicable rules of the commission”.

(q) Delete subsection 4.1.5.2 without substitution.

(r) Amend Section 4.1.6 by deleting “promptly take steps, such as contacting a qualified contractor, consultant, or engineer, to evaluate the adequacy of the installed system in order to protect the building or hazard in question” and substituting “comply with the applicable rules of the commission”.

(s) Delete subsection 4.1.6.1 without substitution.

(t) Amend Section 4.2 to read as follows: Where an impairment to a water-based fire protection system occurs, the procedures outlined in Chapter 10 of this standard shall be followed, including the attachment of a tag to the impaired system. The servicing fire department shall be notified when a system is impaired and when the system is returned to service.

(u) Amend Section 4.5.1 by inserting “qualified individuals” before “to verify”.

(v) Delete Section 4.9 in its entirety without substitution.

(w) Amend Section 5.2.1.2 by deleting “Unacceptable obstructions” and substituting “Obstructions”.

(x) In subsection 5.2.5, delete “adequate” in the last sentence.

(y) Amend Section 6.3 by deleting “person” and substituting “individual” in the first sentence.

(z) Delete Section 6.3.1.2 without substitution.

(aa) Delete subsection 7.1.3 without substitution.

(bb) In subsection 7.3.1.2, amend the last sentence to read as follows: Any flow test results that indicate deterioration of available water flow and pressure shall be investigated to ensure that the available water flow and pressure provide the water flow and pressure the fire protection system was designed to provide.

(cc) Delete subsection 7.3.4 without substitution.

(dd) In subsection 8.3.4.1, delete all the text after “tested”.

(ee) In subsection 8.3.4.2, delete all the text after “tested”.

(ff) Amend Section 10.3 to read as follows: Water spray fixed systems shall be maintained to ensure they perform as designed. Frequency of system tests shall be in accordance with Table 7-3.1. They shall be serviced in accordance with

this standard and with the manufacturer’s instructions.

(gg) Amend subsection 10.3.2.3 to read as follows: The owner’s representative and the servicing fire department or fire brigade shall be notified that testing is to be conducted so they have the opportunity to observe the inspection and testing of the water spray fixed system.

(hh) Amend subsection 10.3.4.4.2 to read as follows: A second pressure reading shall be recorded at the deluge valve.

(ii) Amend subsection 10.3.4.4.3 to read as follows: Readings shall be compared to the hydraulic design pressures to ensure the original system design requirements are met.

(jj) In subsection 10.3.5, delete everything after “tested simultaneously”.

(kk) Amend subsection 11.1.2.1 to read as follows: This section shall apply to foam-water systems.

(ll) In subsection 12.3.1.2, delete “applicable NFPA standards” and substitute “rules of the commission”.

(mm) In subsection 12.3.1.3, delete “applicable NFPA standard” and substitute “rules of the commission”.

(nn) In subsection 12.3.2.1.1, delete “applicable NFPA standards” and substitute “rules of the commission”.

(oo) Amend subsection 12.6.1.1.1 to read as follows: Valves secured with locks or electrically supervised in accordance with the rules of the commission shall be inspected monthly.

(pp) In subsection 12.6.1.2.1, amend the exception to read as follows: Valves secured with locks or electrically supervised in accordance with the rules of the commission shall be inspected monthly.

(qq) Amend Section 12.6.2.1 by deleting “, as required by the authority having jurisdiction,” without substitution.

(rr) Amend subsection 12.6.3.1 by deleting “trained” and substituting “qualified”.

(ss) Amend Section 12.6.3.2 by deleting “the authority having jurisdiction” without substitution.

(tt) Amend Section 13.2.1.1 by deleting “alternative” and substituting “approved”.

(uu) Amend Section 13.2.3.3 by deleting “alternative” and substituting “approved”.

Proposed Rules

(vv) Amend Section 13.3.1 by deleting “alternative” and substituting “approved”.

(ww) Delete Section 14.2.3 without substitution.

(xx) Delete Section 14.3.3 without substitution.

(yy) Amend Section 14.5.2(3) by deleting the first sentence and “(d) *Establishment and implementation of an approved program to eliminate potential ignition sources and limit the amount of fuel available to the fire.”.

(zz) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-12*)

675 IAC 28-1-13 NFPA 33; standard for spray application using flammable and combustible materials

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 13. (a) That certain document, being titled NFPA 33 - Standard for Spray Application Using Flammable and Combustible Materials, 2003 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference as if fully set out in this section, except as revised.

(b) The following documents referenced in NFPA 33 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 16.
- (2) NFPA 30.
- (3) NFPA 69.
- (4) NFPA 91.
- (5) NFPA 101.
- (6) NFPA 220.
- (7) NFPA 432.
- (8) NFPA 496.
- (9) NFPA 701.
- (10) UL 340.
- (11) UL 900.
- (12) UL 2208.

(c) The following documents referenced in NFPA 33 are adopted and are enforceable:

- (1) NFPA 10, as adopted in section 2 of this rule.
- (2) NFPA 12, as adopted in section 4 of this rule.
- (3) NFPA 13, as adopted in 675 IAC 13-1-8.
- (4) NFPA 17, as adopted in section 9 of this rule.
- (5) NFPA 70, as adopted in 675 IAC 17.
- (6) NFPA 72, as adopted in section 28 of this rule.

(7) NFPA 86, as adopted in section 31 of this rule.

(8) NFPA 2001, as adopted in section 40 of this rule.

(9) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) In Section 1.2.1, delete everything after the first sentence.

(e) Delete Section 1.4.

(f) Amend Chapter 3 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LIQUID means a material that has a melting point which is equal to or less than sixty-eight degrees Fahrenheit (68°F) (twenty degrees Celsius (20°C)) and a boiling point which is greater than sixty-eight degrees Fahrenheit (68°F) (twenty degrees Celsius (20°C)) at 14.7 psi (101.3 kPa). When not otherwise identified, the term “liquid” includes both flammable and combustible liquids.

COMBUSTIBLE LIQUID means a liquid having a flash point at or above one hundred degrees Fahrenheit (100°F) (thirty-seven and eight-tenths degrees Celsius (37.8°C)) and below one hundred forty degrees Fahrenheit (140°F) (sixty degrees Celsius (60°C)). Combustible liquids are subdivided as follows. The category of combustible liquids does not include compressed gases or cryogenic fluids.

Class II liquids are those having closed cup flash points at or above one hundred degrees Fahrenheit (100°F) (thirty-seven and eight-tenths degrees Celsius (37.8°C)) and below one hundred forty degrees Fahrenheit (140°F) (sixty degrees Celsius (60°C)).

Class III-A liquids are those having closed cup flash points at or above one hundred forty degrees Fahrenheit (140°F) (sixty degrees Celsius (60°C)) and below

two hundred degrees Fahrenheit (200°F) (ninety-three and three-tenths degrees Celsius (93.3°C)).

Class III-B liquids are those liquids having closed cup flash points at or above two hundred degrees Fahrenheit (200°F) (ninety-three and three-tenths degrees Celsius (93.3°C)).

FLAMMABLE LIQUID means a liquid having a closed cup flash point below one hundred degrees Fahrenheit (100°F) (thirty-seven and eight-tenths degrees Celsius (37.8°C)). The category of flammable liquids does not include compressed gases or cryogenic fluids. Flammable liquids are further categorized into a group known as Class I liquids. The Class I category is subdivided as follows:

Class I-A liquids include those having a flash point below seventy-three degrees Fahrenheit (73°F) (twenty-two and eight-tenths degrees Celsius (22.8°C)) and having a boiling point below one hundred degrees Fahrenheit (100°F) (thirty-seven and eight-tenths degrees Celsius (37.8°C)).

Class I-B liquids include those having a flash point below seventy-three degrees Fahrenheit (73°F) (twenty-two and eight-tenths degrees Celsius (22.8°C)) and having a boiling point at or above one hundred degrees Fahrenheit (100°F) (thirty-seven and eight-tenths degrees Celsius (37.8°C)).

Class I-C liquids include those having a flash point at or above seventy-three degrees Fahrenheit (73°F) (twenty-two and eight-tenths degrees Celsius (22.8°C)) and below one hundred degrees Fahrenheit (100°F) (thirty-seven and eight-tenths degrees Celsius (37.8°C)).

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

SPRAY BOOTH means a mechanically ventilated appliance of varying dimensions and construction provided to enclose or accommodate a spraying operation and to confine and limit the escape of spray vapor and residue and to exhaust it safely.

SPRAY AREA mean an area in which quantities of flammable vapors or combustible residues, dusts, or deposits are present due to the operation of spraying processes.

SPRAY ROOM means a room designed to accommodate spraying operations complying with the building code requirements for a Group H, Division 2 Occupancy.

(2) Add the following definitions:

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodel-

ing, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

FIRE CODE means the Indiana Fire Code.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference in 675 IAC 22-2.3 and amended.

MECHANICAL CODE means the Indiana Mechanical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

(g) Amend Section 4.2 to read as follows: Location: Spray application operations and processes shall be in accordance with the Indiana Building Code (675 IAC 13) and the Indiana Fire Code.

(h) Amend Section 5.1.1 by deleting all the text after "Class 2" without substitution.

(i) Amend Section 5.1.4 to read as follows: Spray booths shall be constructed of steel not less than forty-four thousandths (0.044) inch (1.118 mm) (eighteen (18) gage) in thickness or other approved noncombustible materials.

(j) Amend Section 5.1.6 to read as follows: Spray rooms shall be constructed and separated from surrounding areas of the building in accordance with the Indiana Building Code (675 IAC 13) and the Indiana Fire Code.

(k) Amend Section 5.1.7 to read as follows: Enclosed spray booths and spray rooms shall be provided with means of egress in accordance with the Indiana Building Code (675 IAC 13).

(l) Amend Section 5.1.8 by deleting "where approved by the authority having jurisdiction".

(m) Amend Section 5.3 to read as follows: Separation from Other Occupancies. Spray booths shall be separated from other operations in accordance with the Indiana Building Code (675 IAC 13). Multiple connected spray booths shall be considered as "other operations".

(n) Amend Section 6.2.1 to read as follows: Electrical wiring and utilization equipment shall be in accordance with the Indiana Electrical Code (675 IAC 17) and this chapter.

Proposed Rules

(o) Amend Section 6.3.1.4 by adding “s” to “exist” before the “.”.

(p) In Section 6.8 (2), after “requirements of”, delete “Section 400.2 of”.

(q) Amend Section 7.1 to read as follows: Ventilating and exhaust systems shall be designed and installed in accordance with the Indiana Building Code (675 IAC 13) and the Indiana Mechanical Code (675 IAC 18).

(r) Amend the Section 7.2 exception by deleting “a properly applied” and substituting “an approved”. Delete the last sentence.

(s) Amend Section 8.1 to read as follows: Storage handling and mixing of flammable and combustible liquids shall be in accordance with the Indiana Fire Code.

(t) Delete Sections 8.2 through 8.5 without substitution.

(u) Add to the end of Section 9.1: in accordance with the Indiana Fire Code.

(v) Amend Section 9.6 to read as follows: Approved portable fire extinguishers shall be installed in accordance with the Indiana Fire Code.

(w) Amend Section 9.7.1 by deleting “, both listed and unlisted,” without substitution.

(x) Delete Section 9.7.2 in its entirety without substitution.

(y) Amend Section 10.1 to read as follows: Maintenance procedures shall be established to ensure that all spray application apparatus and processes are operated and maintained in accordance with the manufacturer’s specifications and the applicable rules of the Fire Prevention and Building Safety Commission.

(z) Amend Section 10.8.2 by deleting all the text after “approved” without substitution.

(aa) Amend Section 10.11 by deleting “at” and substituting “in”.

(bb) Delete Section 10.12 without substitution.

(cc) Amend Section 11.2.1 by deleting “applicable requirements of all other chapters” and inserting “Indiana Fire Code”.

(dd) Amend Section 12.2 by deleting “applicable requirements of all other chapters” and inserting “Indiana Fire Code”.

(ee) Amend Section 13.3.1.5 by inserting “Approved” in

the first sentence and deleting all the text after “used” without substitution.

(ff) Amend Section 13.3.1.6.1 by deleting all the text in the first sentence after “that” and substituting “is approved”. Delete the second sentence and substitute “Track-mounted systems shall be approved.”.

(gg) Delete the text of Chapter 14 in its entirety without substitution.

(hh) Amend Section 15.2 by deleting “applicable requirements of all other chapters” and inserting “Indiana Fire Code”.

(ii) Amend Section 16.2 to add a second sentence to read as follows: Spray application operations that involve the use of organic peroxide formulations and other plural component coatings shall comply with the requirements of the Indiana Fire Code.

(jj) Delete the text of Chapter 17 and substitute the following: See the Indiana Fire Code.

(kk) Delete the text of Chapter 18 and substitute the following: In accordance with local ordinance.

(ll) Chapter 2 and the annexes are not adopted as part of the code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-13*)

675 IAC 28-1-14 NFPA 34; dipping and coating processes using flammable or combustible liquids

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 14. (a) That certain standard, being titled as NFPA 34, Dipping and Coating Processes Using Flammable or Combustible Liquids, 2003 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference, as if fully set out in this section, except as revised hereafter.

(b) The following documents referenced in NFPA 34 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 30.
- (2) NFPA 91.
- (3) ASTM D92.

(c) The following documents referenced in NFPA 34 are adopted and are enforceable:

- (1) NFPA 10, as adopted in section 2 of this rule.

- (2) NFPA 11, as adopted in section 3 of this rule.
- (3) NFPA 12, as adopted in section 4 of this rule.
- (4) NFPA 13, as adopted in 675 IAC 13-1-8.
- (5) NFPA 15, as adopted in section 8 of this rule.
- (6) NFPA 17, as adopted in section 9 of this rule.
- (7) NFPA 70, as adopted in 675 IAC 17.
- (8) NFPA 2001, as adopted in section 40 of this rule.

(d) In Section 1.2.1, delete everything after the first sentence.

(e) Delete Section 1.4 without substitution.

(f) Amend Chapter 3 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

BOILING POINT means the boiling point of a liquid as referenced in the Indiana Fire Code (675 IAC 22).

CLOSED CONTAINER means a container sealed by means of a lid or other device such that liquid, vapor, or dusts will not escape from it under ordinary conditions of use or handling.

DIP TANK means a tank, vat, or container of flammable or combustible liquid into which objects or materials are immersed for the purpose of coating, finishing, treating, or similar processes.

LABELED means equipment, devices, appliances, or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LIQUID means a material that has a melting point which is equal to or less than sixty-eight degrees Fahrenheit (68°F) (twenty degrees Celsius (20°C)) and a boiling point which is greater than sixty-eight degrees Fahrenheit (68°F) (twenty degrees Celsius (20°C)) at 14.7 psi (101.3 kPa). When not otherwise identified, the term "liquid" includes both flammable and combustible liquids.

LISTED means equipment, appliances, devices, or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

NONCOMBUSTIBLE MATERIAL, as applied to building construction materials, means a material which, in the form in which it is used, is either one (1) of the following:

- 1. Material of which no part will ignite and burn when subjected to fire. Any material conforming to ASTM E136 shall be considered noncombustible.
- 2. Material having a structural base of noncombustible material as defined in Item 1 above, with a surfacing material not over one-eighth (1/8) inch (3.2 mm) thick which has a flame-spread rating of fifty (50) or less.

"Noncombustible" does not apply to surface finish materials. Material required to be noncombustible for reduced clearances to flues, heating appliances, or other sources of high temperature shall consist of material conforming to Item 1. No material shall be classed as noncombustible that is subject to increase in combustibility or flame-spread rating, beyond the limits herein established, through the effects of age, moisture, or other atmospheric condition.

Flame-spread rating as used herein refers to rating obtained according to tests conducted as specified in ASTM E84-99.

(2) Add the following definitions:

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as incorporated by reference and amended in 675 IAC 22-2.3.

MECHANICAL CODE means the Indiana Mechanical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

(g) Amend Section 4.2 to read as follows: Dipping and

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coating processes shall be separated from other operations, materials, or occupancies in accordance with the Indiana Building Code (675 IAC 13).

(h) Delete the text of Section 4.5 and substitute to read as follows: Dipping and coating processes shall be located in accordance with the Indiana Building Code (675 IAC 13).

(i) In Section 5.7.3, after “safe”, insert “outside”.

(j) In Section 5.8.2, delete “NFPA 30, Flammable and Combustible Liquids Code” and insert “the Indiana Fire Code”.

(k) In Section 7.2, delete “NFPA 91, Standard for Exhaust Systems for Air Conveyors and Materials” and insert “the Mechanical Code (675 IAC 18)”.

(l) In Section 7.4, delete “and adequate supply of” at the beginning of the first sentence.

(m) Delete the text of Section 7.7 and substitute to read as follows: Exhaust ducts and fasteners shall be in accordance with the Mechanical Code (675 IAC 18).

(n) Delete the title and text of Chapter 8 and substitute to read as follows: Storage, handling, and mixing of flammable and combustible liquids shall be in accordance with the Indiana Fire Code.

(o) In Section 9.2, delete “authority having jurisdiction” and insert “building code” (675 IAC 13).

(p) Delete Section 10.7 and substitute to read as follows: Where maintenance operations involve the use of welding, burning, or grinding equipment, such operations shall be in accordance with Chapter 26 of the Indiana Fire Code.

(q) Delete Chapter 12 without substitution.

(r) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-14*)

675 IAC 28-1-15 NFPA 37; standard for the installation and use of stationary combustion engines and gas turbines

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 15. (a) That certain standard, being titled NFPA 37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, 2002 Edition, published by National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be

and the same is hereby adopted by reference as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 37, are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 11A.
- (2) NFPA 12A.
- (3) NFPA 30.
- (4) NFPA 54.
- (5) NFPA 211.
- (6) NFPA 750.
- (7) API 620.
- (8) API 650.
- (9) ANSI/ASME B31.3.
- (10) MSS SP-69.

(c) The following documents are adopted and are enforceable:

- (1) NFPA 10, as adopted in section 2 of this rule.
- (2) NFPA 12, as adopted in section 4 of this rule.
- (3) NFPA 13, as adopted in 675 IAC 13-1-8.
- (4) NFPA 15, as adopted in section 8 of this rule.
- (5) NFPA 17, as adopted in section 9 of this rule.
- (6) NFPA 58, as adopted in 675 IAC 22-2.2-14.
- (7) NFPA 70, as adopted in 675 IAC 17.
- (8) NFPA 72, as adopted in section 28 of this rule.
- (9) NFPA 2001, as adopted in section 40 of this rule.
- (10) ANSI/ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) Amend Section 1.7 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

(2) Add the following definitions:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the

structure.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference in 675 IAC 22-2.3.

NFPA 30 means the Indiana Fire Code.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

TRAINED means one who has undergone the instructions necessary to design, install, and perform maintenance and inspections.

(e) The remaining annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code.

(f) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards reference therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-15*)

675 IAC 28-1-16 NFPA 50; standard for bulk oxygen systems at consumer sites

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 16. (a) That certain standard, being titled NFPA 50, Standard for Bulk Oxygen Systems at Consumer Sites, 2001 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 50 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 99.
- (2) NFPA 220.
- (3) ANSI/ASME B31.3.
- (4) CGA S-1.3.
- (5) ASTM E136.
- (6) Title 49, Code of Federal Regulations.

(c) The following documents referenced in NFPA 50 are adopted and are enforceable:

- (1) NFPA 70, as adopted at 675 IAC 17.
- (2) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) Delete Section 1.1.2.

(e) Amend Section 1.3 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

NONCOMBUSTIBLE/LIMITED-COMBUSTIBLE CONSTRUCTION: See the Indiana Building Code (675 IAC 13), Chapter 7.

NONCOMBUSTIBLE MATERIAL means a material which, in the form in which it is used and under the conditions anticipated, will not ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat. Materials reported as noncombustible, when tested in accordance with ASTM E136, Standard Method of Test for Behavior of Materials in a Vertical Tube Furnace at 750°C, shall be considered noncombustible materials.

(2) Add the following definitions:

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

FIRE RESISTIVE CONSTRUCTION: See the Building Code (675 IAC 13), Chapter 7.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

ACCESSIBLE, READILY, means capable of being

reached safely and quickly for operation, repair, or inspection without requiring those to whom ready access is required to climb over or remove obstacles, or to resort to the use of portable access equipment.

(f) Delete the text of Chapter 2 and substitute to read as follows:

2.1 Location of Bulk Oxygen Systems

2.1.1 Bulk oxygen storage systems shall be located in accordance with the Indiana Fire Code (675 IAC 22).

(g) Amend Section 3.1.2 to read as follows: Liquid oxygen containers shall be listed or labeled.

(h) Amend Section 3.1.3 to read as follows: High-pressure gaseous oxygen containers shall be listed or labeled.

(i) Amend Section 3.2.1 to read as follows: Piping, tubing, and fittings shall be listed or labeled for oxygen service and for the pressures and temperatures involved.

(j) Delete Section 3.2.2.

(k) Delete Section 3.2.3.

(l) Amend Section 3.5.9 to read as follows: Electrical wiring for bulk oxygen equipment shall be in accordance with the Indiana Electrical Code (675 IAC 17).

(m) Chapter 5 and the appendices are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-16*)

675 IAC 28-1-17 NFPA 50B; standard for liquefied hydrogen systems at consumer sites

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 17. (a) That certain document, being titled NFPA 50B, Standard for Liquefied Hydrogen Systems at Consumer Sites, 1999 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and same is hereby adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 50B are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 220.
- (2) NFPA 496.
- (3) ASME B31.3.
- (4) CGA S-1.1.
- (5) CGA S-1.2.
- (6) CGA S-1.3.

(7) ASTM E136-96a.

(8) Title 49, Code of Federal Regulations.

(c) The following documents referenced in NFPA 50B are adopted and are enforceable:

(1) NFPA 70, as adopted at 675 IAC 17.

(2) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) Delete Section 1-2 without substitution.

(e) In Section 1-3, amend the following definitions: APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

(1) Investigation or tests conducted by nationally recognized authorities; or

(2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or

(3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

OUTDOOR LOCATION means outside of any building or structure.

(f) In Section 1-3, add the following definitions:

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

NFPA 70 means the Indiana Electrical Code (675 IAC

17).

QUALIFIED means having successfully completed a course of instruction related to the equipment being installed, serviced, or repaired. Such instruction shall be provided by the manufacturer of the equipment or their authorized representative.

(g) Delete Section 4-1.2 without substitution.

(h) Delete the text of Section 4-2 and substitute to read as follows: Buildings or portions of buildings which contain liquefied hydrogen shall be constructed in accordance with the Indiana Building Code (675 IAC 13).

(i) Delete Section 4-3 without substitution.

(j) Chapter 8 and the appendices are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-17*)

675 IAC 28-1-18 NFPA 51; standard for the design and installation of oxygen-fuel gas system for welding, cutting, and allied processes

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 18. (a) That certain document, being titled as NFPA 51, Standard for the Design and Installation of Oxygen-Fuel Gas System for Welding, Cutting and Allied Processes, 2002 Edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference, as if fully set out in this section, except as revised hereafter.

(b) The following documents referenced in NFPA 51 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 54.
- (2) NFPA 101.
- (3) NFPA 255.
- (4) NFPA 259
- (5) ANSI B31.3.
- (6) ANSI Z49.1.
- (7) ASTM B88.
- (8) ASTM E136.
- (9) ANSI/CGA C4.
- (10) ANSI/CGA V1.
- (11) CGA G1.6.
- (12) CGA E-1.
- (13) CGA E-3.

(c) The following documents referenced in NFPA 51 are adopted and are enforceable:

(1) NFPA 13, as adopted in 675 IAC 13-1-8.

(2) NFPA 15, as adopted in section 8 of this rule.

(3) NFPA 50, as adopted in section 16 of this rule.

(4) NFPA 51B, as adopted in section 20 of this rule.

(5) NFPA 58, as adopted in 675 IAC 22-2.2-14.

(6) NFPA 70, as adopted in 675 IAC 17.

(7) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) Delete Section 1.3 in its entirety without substitution.

(e) Delete Section 1.6.1 in its entirety without substitution.

(f) Amend Chapter 3 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LIMITED-COMBUSTIBLE MATERIALS means a material not complying with the definition of noncombustible material, which, in the form in which it is used, has a potential heat value not exceeding three thousand five hundred (3,500) Btu per lb (8,141 IJ/kg) and complies with one (1) of the following paragraphs (a) or (b). Materials subject to increase in combustibility or flame-spread rating beyond the limits herein established through the effects of age, moisture, or other atmospheric condition shall be considered combustible.

(a) Materials having a structural base of noncombustible material, with a surfacing not exceeding a thickness of one-eighth ($\frac{1}{8}$) inch (3.2 mm) that has a flame-spread rating not greater than fifty (50).

(b) Materials, in the form and thickness used, other than as described in (a), having neither a flame-spread rating greater than twenty-five (25) nor evidence of continued progressive combustion and of

such composition that surfaces that would be exposed by cutting through the material on any plane would have neither a flame-spread rating greater than twenty-five (25) nor evidence of continued progressive combustion.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

NONCOMBUSTIBLE MATERIAL, as applied to building construction materials, means a material which, in the form in which it is used, is either one (1) of the following:

1. Material of which no part will ignite and burn when subjected to fire. Any material conforming to ASTM E136 shall be considered noncombustible.
2. Material having a structural base of noncombustible material as defined in Item 1 above, with a surfacing material not over one-eighth ($\frac{1}{8}$) inch (3.2 mm) thick which has a flame-spread rating of fifty (50) or less.

“Noncombustible” does not apply to surface finish materials. Material required to be noncombustible for reduced clearances to flues, heating appliances, or other sources of high temperature shall consist of material conforming to Item 1. No material shall be classed as noncombustible that is subject to increase in combustibility or flame-spread rating, beyond the limits herein established, through the effects of age, moisture, or other atmospheric condition.

Flame-spread rating as used herein refers to rating obtained according to tests conducted as specified in ASTM E84-99.

- (2) Add the following definitions:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

MECHANICAL CODE means the Indiana Mechanical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

- (g) Delete subsection 3.2.6 in its entirety without substitution.

- (h) Amend Section 4.1.1 to read “Cylinders shall be

designed, fabricated, tested, and marked (stamped) in accordance with the rules of the commission.

- (i) Amend Section 4.2.2 to read as follows: Separate rooms or buildings used for gas cylinder storage shall be provided with natural or mechanical ventilation designed in accordance with the building code and the mechanical code. Ventilation systems shall discharge a minimum of fifty (50) feet (15 m) from intakes of air handling systems, air conditioning equipment, and air compressors.

- (j) In Section 5.1.3, amend the last sentence to read: Such buildings or rooms shall be in accordance with the building code (675 IAC 13).

- (k) Amend Section 5.2.4, Exception, to read as follows: Exception: An oxygen manifold to which cylinders having an aggregate capacity of more than six thousand five hundred (6,500) cubic feet (168 m³) of oxygen are connected shall be located as follows:

- (1) Outdoors, or
- (2) In a separate building constructed in accordance with the building code, or
- (3) If located inside a building having occupancy other than that directly associated with the production of acetylene, the storage of calcium carbide, or the storage and manifold of fuel gases used in welding and cutting, shall be in either a separate room constructed in accordance with the building code or in an area with no combustible material within twenty (20) feet (6 m) of the manifold.

- (l) Amend Section 6.3.1 to read as follows: Piping shall be protected against corrosion and physical damage. Piping under buildings or foundations shall be provided with a vented casing or located in a well-ventilated tunnel.

- (m) In Section 6.5.1, delete “in accordance with ANSI B31.1, Chemical plant and Petroleum Refinery Piping.”.

- (n) In Section 8.4.1.2, delete “adequate” and substitute “approved”.

- (o) In Section 8.4.1.4, delete “adequate” and substitute “approved”.

- (p) In Section 8.4.2, delete “sufficient” without substitution and add at the end of the sentence “in accordance with the manufacturer’s instructions”.

- (q) Amend Section 8.5.1.1 to read as follows: Construction of outside generator houses and inside generator rooms for stationary acetylene generators shall be in accordance with the Indiana Building Code (675 IAC 13).

- (r) Delete Section 8.5.1 in its entirety and substitute

“Construction: Construction shall be performed in accordance with the building code and fire code.”.

(s) Amend Section 8.5.2 to read as follows: Ventilation. Inside generator rooms or outside generator houses shall be ventilated in accordance with the Indiana Building Code (675 IAC 13) and the Indiana Mechanical Code (675 IAC 18).

(t) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-18*)

675 IAC 28-1-19 (Reserved)

675 IAC 28-1-20 NFPA 51B; standard for fire prevention during welding, cutting and other hot work

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 20. (a) That certain document, being titled as NFPA 51B, Standard for Fire Prevention During Welding, Cutting, and Other Hot Work, 2003 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference, as if fully set out in this section, except as revised hereafter.

(b) The following documents referenced in NFPA 51B are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 55.
- (2) NFPA 241.

(c) The following documents referenced in NFPA 51B are adopted and are enforceable:

- (1) NFPA 25, as adopted in section 12 of this rule.
- (2) NFPA 51, as adopted in section 18 of this rule.

(d) Delete Section 1.4 in its entirety without substitution.

(e) Amend Chapter 3 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

(2) Add the following definitions:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

FIRE SAFE means an area where combustibles have been removed or protected from ignition sources.

FIRE WATCHER, for the purpose of this standard, means a person trained in the use of fire-extinguishing equipment and fire alarm procedures.

TRAINED means one who has undergone the instructions necessary to perform duties assigned.

(f) Delete subsection 3.2.4 in its entirety without substitution.

(g) Amend Section 4.3 to read as follows: The hot work operator shall cut or weld where conditions are fire safe.

(h) Amend Section 5.1.2.1 to read as follows: A designated area shall be a specific area designed or approved for hot work, such as a maintenance shop or a detached outside location that is of noncombustible or fire-resistive construction, made fire safe, and suitably segregated from adjacent areas.

(i) Amend Section 5.3 to read as follows:

5.3.1 Before hot work operations are permitted and at least once per day, the area shall be inspected by the individual responsible for authorizing hot work operations (see section 4.1.2) to ensure that it is a fire safe area.
5.3.2 This individual shall designate precautions to be followed in writing and shall verify the following:

(j) In Section 5.5, delete “qualified” and insert “trained”.

(k) In Section 7.2, delete “competent” and insert “trained”.

(l) In Section 7.4.3, after “The” and before “fire”, insert “servicing”.

(m) Chapter 2 and the appendices are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-20*)

675 IAC 28-1-21 NFPA 52; compressed natural gas (CNG) vehicular fuel systems code

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

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Sec. 21. (a) That certain document, being titled NFPA 52-Compressed Natural Gas (CNG) Vehicular Fuel Systems Code, 2002 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 52 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 30.
- (2) NFPA 30A.
- (3) NFPA 54.
- (4) NFPA 101.
- (5) NFPA 259.
- (6) NFPA 302.
- (7) NFPA 303.
- (8) NFPA 496.
- (9) ANSI SI 10.
- (10) ANSI Z 87.1.
- (11) ANSI Z 89.1.
- (12) API RP 2003.
- (13) ANSI/ASME B31.3.
- (14) ASTM A47.
- (15) ASTM A395.
- (16) ASTM A536.
- (17) ASTM E136.
- (18) CGA S-1.1.
- (19) CSA B 51.
- (20) ANSI/IAS NGV1.
- (21) ANSI/IAS NGV2.
- (22) IAS US 5-96.
- (23) SAE J 1616.
- (24) Title 49, Code of Federal Regulations.

(c) The following documents are adopted and are enforceable:

- (1) NFPA 37, as adopted in section 15 of this rule.
- (2) NFPA 70, as adopted in 675 IAC 17.
- (3) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) Delete Section 1.3.

(e) Amend Section 1.4 by deleting all the text and substituting "Alternate provisions are permitted as specified in 675 IAC 12-11."

(f) Amend Chapter 3 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or

- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LIMITED-COMBUSTIBLE MATERIAL: Delete "(as defined in NFPA 220 Standard of Types of Building Construction)".

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

NONCOMBUSTIBLE MATERIAL: Delete "(as defined in NFPA 220 Standard of Types of Building Construction)".

(2) Add the following definitions:

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

HAZARDOUS MATERIALS are those chemicals or substances which are hazardous as defined and classified in accordance with the Indiana Fire Code.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as incorporated by reference and amended at 675 IAC 22-2.3.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

INTERNATIONAL FIRE CODE (I.F.C.) means the Indiana Fire Code.

(g) Delete Section 3.2.6 in its entirety without substitution.

(h) Section 5.13.4(3) is amended to read as follows: delete “proved suitable tests” and substitute “approved by the manufacturer”.

(i) Delete Section 6.4.2.2 without substitution.

(j) Amend Section 6.4.2.3 to read as follows: Compression, storage, and dispensing equipment located outdoors shall be aboveground, shall not be beneath electric power lines or where exposed by power line failure, and shall be located in accordance with the Indiana Fire Code.

(k) Amend Section 6.4.2.8 by deleting “important”.

(l) Amend Section 6.4.3 to read as follows:

6.4.3 Indoors

6.4.3.1 General. Compression, dispensing equipment, and storage containers connected for use are allowed to be located inside of buildings. The buildings shall be constructed in accordance with the building code and the requirements of the Indiana Fire Code Chapter 35 for flammable gases.

6.4.3.2 Quantity Limit. Storage shall be limited to not more than ten thousand (10,000) cubic feet (283,168 L) of natural gas in each building.

Exception: Compressed natural gas stored in vehicle-mounted fuel-supply containers.

6.4.3.3 Explosion Control. Explosion control shall be provided in accordance with the Indiana Fire Code Chapter 35.

6.4.3.4 Automatic Fire-extinguishing System. Rooms or buildings used for the storage, compression, or dispensing of CNG shall be protected throughout by an automatic sprinkler system. The automatic sprinkler system shall be designed in accordance with the Indiana Fire Code Chapter 35 and the Indiana Building Code (675 IAC 13).

6.4.3.5 Mechanical Ventilation. Ventilation shall be provided throughout for buildings or rooms used for the storage, compression, or dispensing of CNG. Ventilation shall be by a continuous mechanical ventilation system or by a mechanical ventilation system activated by a supervised methane gas-detection system when a gas concentration of not more than twenty (20) percent of the lower flammability limit is present. Failure of the mechanical ventilation system shall shut down the fuel compression and dispensing system. The mechanical ventilation system shall be in accordance with the Indiana Fire Code Chapter 35 and the Indiana Mechanical Code (675 IAC 18). In addition, the mechanical ventilation system shall be designed for both lighter than air and heavier than air vapors.

Exception: The mechanical ventilation system can be designed for methane when the building or room is used exclusively for the dispensing of CNG.

6.4.3.6 Supervised Methane Gas-Detection System. A

supervised methane gas-detection system shall be provided throughout buildings or rooms used for the storage, compression, or dispensing of CNG. The gas-detection system shall sound a distinct alarm signal when a gas concentration of not more than twenty (20) percent of the lower flammability limit is present. Activation of the gas-detection system shall shut down the fuel compression and dispensing system.

6.4.3.7 Electrical Service. Buildings and rooms used for the storage, compression, or dispensing of CNG shall be classified in accordance with Table 4-12 for installations of electrical equipment. Electrical equipment shall be installed in accordance with the Indiana Electrical Code (675 IAC 17).

6.4.3.8 Emergency Shutdown Devices. Emergency shutdown devices shall be provided in rooms or buildings used for storage, compression, or dispensing of CNG. Such devices shall be provided at each dispenser, at each exit, and at the room or building used for the storage or compression of CNG. Activation of the emergency shutdown devices shall shut down the compression and dispensing equipment.

6.4.3.9 Discharge of Relief Devices. Pressure-relief devices on storage and compression systems shall be provided with an approved means of discharging CNG outside of the building. The point of discharge shall be a minimum of ten (10) feet (3,048 mm) from building and ventilation openings, property lines, public ways, and paths of egress. The point of discharge shall not impinge on the building.

6.4.3.10 Signs. Rooms or buildings used for the storage, compression, or dispensing of CNG shall be provided with warning signs with the words WARNING-NO SMOKING-FLAMMABLE GAS. The wording shall be in plainly legible red letters on a white reflective background with letters no less than one (1) inch (25.4 mm) high.

(m) In Section 6.5.1, delete the last sentence and substitute the following: Where flooding can occur, they shall be secured in accordance with Section 3404.2.7.8 of the Indiana Fire Code.

(n) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-21*)

675 IAC 28-1-22 (Reserved)

675 IAC 28-1-23 NFPA 59; utility lp-gas plant code

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 23. (a) That certain document, being titled NFPA 59-Utility LP-Gas Plant Code, 2004 Edition, published by the

Proposed Rules

National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9109, be and the same is hereby adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 59 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 11A.
- (2) NFPA 12A.
- (3) NFPA 16.
- (4) NFPA 22.
- (5) NFPA 24.
- (6) NFPA 30.
- (7) NFPA 54.
- (8) NFPA 101.
- (9) NFPA 290.
- (10) NFPA 780.
- (11) NFPA 1961.
- (12) NFPA 1962.
- (13) NFPA 1963.
- (14) NFPA 1971.
- (15) NFPA 1981.
- (16) API 607-1998.
- (17) API 620-2001.
- (18) ASCE 7.
- (19) ASME B31.3.
- (20) ASTM A47.
- (21) ASTM A395.
- (22) ASTM A536.
- (23) UL 132.

(c) The following documents referenced in NFPA 59 are adopted and are enforceable:

- (1) NFPA 11, as adopted in section 3 of this rule.
- (2) NFPA 12, as adopted in section 4 of this rule.
- (3) NFPA 13, as adopted in 675 IAC 13-1-8.
- (4) NFPA 14, as adopted in 675 IAC 13-1-9.
- (5) NFPA 15, as adopted in section 8 of this rule.
- (6) NFPA 17, as adopted in section 9 of this rule.
- (7) NFPA 20, as adopted in 675 IAC 13-1-10.
- (8) NFPA 51B, as adopted in section 20 of this rule.
- (9) NFPA 58, as adopted at 675 IAC 22-2.2-14.
- (10) NFPA 70, as adopted in 675 IAC 17.
- (11) ASME Boiler and Pressure vessel Code as adopted at 680 IAC 2-1-1.

(d) Delete Section 1.3.1 without substitution.

(e) Delete Section 1.3.2 without substitution.

(f) Delete Section 1.3.3 without substitution.

(g) Amend Chapter 3 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having

jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(2) Add the following definitions:

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference at 675 IAC 22-2.3-1 and amended.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

QUALIFIED means having successfully completed a course of instruction related to the equipment being installed, serviced, or repaired.

(h) Amend Section 4.4 to read as follows: Where damage to liquefied petroleum gas systems from vehicular traffic is a possibility, protection shall be provided in accordance with section 2703.9.3 of the Indiana Fire Code.

(i) Amend Section 4.8.2 to read as follows: Smoking shall be permitted only in designated areas.

(j) In Section 5.4.1.7, delete “NFPA 30, Flammable and Combustible Liquids Code. [58:6.4.5.6]” and substitute “the Indiana Fire Code.”

(k) In Section 5.5.1.9, delete “approval of the authority having jurisdiction” and insert “requirements of the building code (675 IAC 13)”.

(l) In Section 5.7.3, delete “or on accepted engineering practices for the operating conditions involved with the approval of” and substitute “as approved by”.

(m) Amend Section 11.2.1.3 as follows: In the second sentence, delete “competent” and insert “qualified”.

(n) Amend Section 11.3.1 to read as follows: Each facility shall maintain a record of all operating log sheets and recorded data. These records shall be made immediately available to the authority having jurisdiction upon request.

(o) Amend Section 12.5.1(A) to read as follows: The records shall be made immediately available to the authority having jurisdiction upon request.

(p) Delete Section 13.7.6 without substitution.

(q) Delete Section 13.7.7 without substitution.

(r) Delete Section 13.7.9 without substitution.

(s) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-23*)

675 IAC 28-1-24 NFPA 59A; standard for the production, storage, and handling of liquefied natural gas (LNG)

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 24. (a) That certain document, being titled NFPA 59A - Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG), 2001 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and same is hereby adopted by reference, as if fully set out in this section, except as revised hereafter.

(b) The following documents referenced in NFPA 59A are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 11A.
- (2) NFPA 12A.
- (3) NFPA 16.
- (4) NFPA 22.

- (5) NFPA 24.
- (6) NFPA 30.
- (7) NFPA 54.
- (8) NFPA 101.
- (9) NFPA 255.
- (10) NFPA 600.
- (11) NFPA 701.
- (12) NFPA 1221.
- (13) NFPA 1901.
- (14) ACI 301.
- (15) ACI 304.6R.
- (16) ACI 311.4R.
- (17) ACI 318.
- (18) ACI 318R.
- (19) ACI 344R-W.
- (20) ACI 372R.
- (21) ACI 373R.
- (22) ACI 506.2.
- (23) API 6D.
- (24) API 620.
- (25) API 2510.
- (26) ASCE 7.
- (27) ASME B31.3.
- (28) ASME B31.5.
- (29) ASME B31.8.
- (30) ASTM A366.
- (31) ASTM A416.
- (32) ASTM A421.
- (33) ASTM A615.
- (34) ASTM A722.
- (35) ASTM A821.
- (36) ASTM A966.
- (37) ASTM C33.
- (38) ASTM E380.
- (39) CGA 341.
- (40) CGA S-1.3.
- (41) CSA B51.
- (42) CAN 4-S102.
- (43) CAN 3-A23.3.
- (44) CAN 3-A23.4.
- (45) CAN A23.1.
- (46) CSA G279.
- (47) CSA C22.1.
- (48) CSA G30.3.
- (49) CSA G30.5.
- (50) CSA G30.18.
- (51) NEHRP Recommended Provisions for Seismic Regulation for New Buildings and Other Structures-1997.
- (52) GRI Report 96/0396.5.
- (53) GRI Report 0176.
- (54) GRI Report 0242.
- (55) Uniform Building Code 1994.
- (56) NACE RP 0169.

(c) The following documents are adopted and are enforce-

able:

- (1) NFPA 10, as adopted in section 2 of this rule.
- (2) NFPA 11, as adopted in section 3 of this rule.
- (3) NFPA 12, as adopted in section 4 of this rule.
- (4) NFPA 13, as adopted in 675 IAC 13-1-8.
- (5) NFPA 14, as adopted in 675 IAC 13-1-9.
- (6) NFPA 15, as adopted in section 8 of this rule.
- (7) NFPA 17, as adopted in section 9 of this rule.
- (8) NFPA 20, as adopted in 675 IAC 13-1-10.
- (9) NFPA 37, as adopted in section 15 of this rule.
- (10) NFPA 51B, as adopted in section 20 of this rule.
- (11) NFPA 58, as adopted in 675 IAC 22-2.2-14.
- (12) NFPA 59, as adopted in section 23 of this rule.
- (13) NFPA 70, as adopted in 675 IAC 17.
- (14) NFPA 72, as adopted in section 28 of this rule.
- (15) NFPA 385, as adopted in section 34 of this rule.
- (16) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) Delete Section 1.3 without substitution.

(e) Delete Section 1.6 without substitution.

(f) Amend Section 1.7 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

FLAME-SPREAD RATING means the flame-spread rating of materials.

(2) Add the following definitions:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

INDIANA BUILDING CODE means the International Building Code, 2000 Edition, as adopted by reference in 675 IAC 13-2.4, as amended.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference in 675 IAC

22-2.3, as amended.

NFPA 30 means the Indiana Fire Code.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

TRAINED means one who has undergone the instructions necessary to design, install, and perform maintenance and inspections.

(g) Amend Section 2.2.2.5 by deleting “NFPA 30, Flammable and Combustible Liquids Code” and substituting “the Indiana Fire Code”.

(h) Amend Section 2.2.3.2(a)(3) by deleting “NFPA 101, Life Safety Code” and substituting “the Building Code”.

(i) Amend Section 2.2.4.1 by deleting the exception in its entirety without substitution.

(j) Delete Section 2.6 in its entirety without substitution.

(k) Amend Section 2.7.5 by deleting “in accordance with 2.2.1 of ACI 344R-W, Design and Construction of Circular Wire and Strand Wrapped Prestressed Concrete Structures”.

(l) Amend Section 3.4.3 by deleting “designed and fabricated in accordance with the standards of the Tubular Exchanger Manufacturers Association (TEMA)” and substituting “listed for their intended use”.

(m) Amend Section 4.1.1 by deleting “qualified” and inserting “trained”.

(n) Amend Section 4.1.7.1 to read as follows: LNG containers shall be installed on foundations in accordance with rules of the commission.

(o) Amend Section 7.7.1 by adding at the end of the first sentence “in accordance with the Indiana Electrical Code (675 IAC 17)”.

(p) Amend Section 8.4.1 by deleting “requirements of the authorities having jurisdiction” and inserting “rules of the commission”.

(q) Amend Section 9.5.2 by deleting the last sentence without substitution.

(r) Delete Section 10.2.5 in its entirety without substitution.

(s) Amend Section 10.6.2 by deleting the exception without substitution.

(t) Amend Section 10.10.4 by deleting, in Exception No. 2, “without” and substituting “with”.

(u) Amend Section 11.3.6.2 (b), 11.3.6.2(c), and 11.3.6.2(d) by deleting “acceptable” and inserting “approved”.

(v) Chapter 12 and the appendices are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-24*)

675 IAC 28-1-25 (Reserved)

675 IAC 28-1-26 (Reserved)

675 IAC 28-1-27 (Reserved)

675 IAC 28-1-28 NFPA 72; national fire alarm code

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-11-8; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 28. (a) That certain standard, being titled NFPA 72, National Fire Alarm Code, 2002 edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 72 are not adopted, are not enforceable, and are for information only:

- (1) NFPA 75.
- (2) NFPA 90A.
- (3) NFPA 110.
- (4) NFPA 111.
- (5) NFPA 601.
- (6) NFPA 780.
- (7) NFPA 1221.
- (8) ANSI A-58.1.
- (9) ANSI S1.4a.
- (10) ANSI S3.2.
- (11) ANSI S3.41.
- (12) ANSI/IEEE C2.
- (13) ANSI /UL 217.
- (14) ANSI/UL 268.
- (15) ANSI/UL 827.
- (16) ANSI/UL 985.
- (17) ANSI/UL 1730.
- (18) ANSI/UL 1971.
- (19) EIA Tr 41.3.
- (20) IEC 60849.
- (21) IEC 60268.
- (22) ISO 7731.

(c) The following documents referenced in NFPA 72 are adopted and are enforceable:

- (1) NFPA 10, as adopted in section 2 of this rule.
- (2) NFPA 13, as adopted in 675 IAC 13-1-25.

(3) NFPA 20, as adopted in 675 IAC 13-1-10.

(4) NFPA 25, as adopted in section 12 of this rule.

(5) NFPA 37, as adopted in section 15 of this rule.

(6) NFPA 70, as adopted in 675 IAC 17-1.6.

(7) ANSI/ASME A17.1, as adopted at 675 IAC 21-3-1.

(d) Delete Section 1.4.2 in its entirety without substitution.

(e) Delete Section 1.7 in its entirety without substitution.

(f) Chapter 2 and the appendices are not adopted as part of this code and are intended for the use as a guide, and the standards referenced therein are not enforceable as part of this code.

(g) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by national recognized authorities; or
- (2) Investigation or tests conducted by national recognized technical or scientific organizations; or
- (3) National accepted principles.

The investigation, tests, or principles shall establish that a method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

(h) Delete Section 3.2.3 without substitution.

(i) Amend the following definitions:

DWELLING UNIT is any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by this code, for not more than one (1) family, or congregate resident for ten (10) or fewer persons.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspections of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED means equipment or materials included in a list published by an organization engaged in a product evaluation, that maintains periodic inspections of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

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 underfloor space is more than six (6) feet above grade as defined herein for more than fifty (50) percent of the total perimeter or is more than twelve (12) feet above grade as defined herein at any point, such usable or unused underfloor space shall be considered as a story.

(j) Add the following definitions:

ACCESSIBLE mean capable of being reached safely and quickly for operation, repair or inspection without requiring those whom ready access is requisite to climb over or remove obstacles, or to resort to the use of portable access equipment.

BUILDING CODE means the building code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference at 675 IAC 22-2.3 and amended.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

TRAINED means one who has undergone the instructions necessary to design, install, and perform testing, maintenance, and inspection.

(k) In Section 3.3.12, after “units”, delete “with independent cooking and bathroom facilities”.

(l) Delete the text of Section 3.3.85 and substitute to read “A building classified as an R-1 occupancy in accordance with the Indiana Building Code.”.

(m) Delete Section 3.3.95 without substitution.

(n) Amend Section 4.4.1.6.3(A) to read as follows: Storage batteries dedicated to the fire alarm system or an uninterruptible power supply (UPS) shall be permitted to supplement the secondary power supply to ensure required operation during the transfer period.

(o) Amend Section 4.4.1.9.3.1(A) to read as follows: Engine-driven generators used to provide secondary power for a protected premises fire alarm system shall be installed in accordance with NFPA 70.

(p) Amend Section 4.4.1.9.3.2(A) to read as follows: Automatic-starting, engine-driven generators used to provide secondary power for a supervising station shall be installed in accordance with NFPA 70.

(q) Amend Section 4.4.1.9.3.2(B) to read as follows: Manual-starting, engine-driven generators used to provide secondary power for a supervising station shall be installed in accordance with NFPA 70.

(r) Amend Section 4.4.3.7 by deleting the exception without substitution.

(s) Amend Section 4.4.4.2.4 by deleting the exception without substitution.

(t) Amend Section 4.4.5 to insert at the end of the exception “where approved by the authority having jurisdiction”.

(u) Amend Section 4.4.6.1.1 by deleting “required” and substituting “approved”.

(v) Amend Section 4.5.1.1 to read as follows: Complete information regarding the system or system alterations, including specifications, wiring diagrams, battery calculations, and floor plans, shall be submitted in accordance with 675 IAC 12-6.

(w) In Section 4.5.1.2:

(1) delete “The authority having jurisdiction” and substitute “local ordinance”; and

(2) delete “Appropriate NFPA requirements” and substitute “The Rules of the Commission”.

(x) Delete Section 4.5.2.1 without substitution.

(y) Delete Section 4.5.2.4 without substitution.

(z) Amend Section 4.5.2.4.1 by amending the first sentence to read as follows: Verification of the installation of a fire alarm system shall ensure that the installed system includes all required components and functions, that those components and functions are installed and operate as required, that the system has been 100-percent acceptance tested in accordance with Chapter 10, and that all required documentation has been provided to the system owner.

(aa) Amend Section 4.5.3.2 as follows: After “required” and before “reported”, insert “by local ordinance”.

(bb) Amend Section 4.6.3 to read as follows: Impaired fire alarm systems shall be in compliance with the Indiana Fire Code.

(cc) Amend Section 5.1.4 as follows: After “alarms” and before “shall”, delete “and household fire alarm systems”.

(dd) Amend Section 5.1.5 to read as follows: The material in this chapter shall be applied by trained persons.

(ee) Amend Section 5.1.6 to read as follows: The interconnection of initiating devices with control equipment configu-

rations and power supplies, or with output systems responding to external actuation shall comply with the applicable rules of the commission, including, without limitation, NFPA 70.

(ff) Delete Section 5.3 in its entirety without substitution.

(gg) In Section 5.4.5, delete “other NFPA codes and standards or as required by the authority having jurisdiction” and substitute “this standard”.

(hh) Amend Section 5.5.2.1 to delete “If required and unless” and substitute “Unless”.

(ii) Amend Section 5.5.2.1.5 to delete “meeting the requirements of NFPA 90A, Standard for the Installation of Air-Conditioning and Ventilating Systems,”.

(jj) Delete Section 5.5.2.4 in its entirety without substitution.

(kk) Amend Section 5.6 to read as follows: Heat sensing fire detectors shall be designed and installed as required by this standard, the Indiana Building Code and the Indiana Fire Code.

(ll) Delete Section 5.6.1.1 in its entirety without substitution.

(mm) Delete Section 5.6.1.2 in its entirety without substitution.

(nn) Delete Section 5.6.1.3 in its entirety without substitution.

(oo) Delete Section 5.6.1.3 without substitution.

(pp) Delete Section 5.6.5.6 in its entirety without substitution.

(qq) Delete Section 5.7.1.1 without substitution.

(rr) Delete Section 5.7.1.2 without substitution.

(ss) Delete Section 5.7.1.3 without substitution.

(tt) Delete Section 5.7.1.4 in its entirety without substitution.

(uu) Amend Section 5.7.1.6 to read as follows: Smoke detectors shall be installed as required by this standard, the Indiana Building Code and the Indiana Fire Code.

(vv) Amend Section 5.7.1.11 to delete the exception without substitution.

(ww) Amend Section 5.7.3.2.3 to delete subsection (C).

(xx) Amend Section 5.9.1 such that the second sentence reads as follows: Such detectors shall be installed in all areas required under the Indiana Building Code or the Indiana Fire Code.

(yy) Amend Section 5.14.3.1 to delete “as required by NFPA 90A, Standard for the Installation of Air-Conditioning and Ventilating Systems, and 5.14.4.2.1.”.

(zz) Amend Section 5.14.4.2.1 to delete “other NFPA Standards” and substitute “the rules of the commission”.

(aaa) Amend Section 5.14.4.2.2 to delete “other NFPA Standards” and substitute “the rules of the commission”.

(bbb) Amend Section 5.14.5.3 by deleting “in accordance with NFPA 90A, Standard for the Installation of Air-Conditioning and Ventilating Systems”.

(ccc) In Section 5.14.5.8, after “location”, delete “acceptable to” and substitute “approved by”.

(ddd) Delete Section 6.2.3 in its entirety without substitution.

(eee) Amend Section 6.4.3.1 by deleting “and on engineering judgment” without substitution.

(fff) Delete Section 6.8.2.8 without substitution.

(ggg) Delete Section 6.8.3 in its entirety without substitution.

(hhh) In Section 6.8.4.5, delete Exception No. 1, renumber Exception No. 2 to be Exception No. 1, and delete number three in Exception No. 2 without substitution.

(iii) Delete Section 6.8.4.7 without substitution.

(jjj) In Section 6.8.5.1.2, delete the last sentence without substitution.

(kkk) In Section 6.8.5.4.3, delete condition number one and renumber two and three.

(lll) In Section 6.8.5.6.2, after 4.4.7.1, delete “and with other applicable NFPA standards”.

(mmm) In Section 6.8.5.8.1, delete “and the authority having jurisdiction”.

(nnn) In Section 6.8.5.10.2, delete “other applicable NFPA standards” and substitute “applicable rules of the commission”.

(ooo) In Section 6.8.6.4.1, delete the exception without substitution.

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(ppp) In Section 6.8.6.4.2, in the second sentence, delete “with the approval of” and substitute “as approved by”.

(qqq) In Section 6.9.4.3, delete method number three.

(rrr) In Section 6.9.4.6, delete method number three.

(sss) In Section 6.9.5.1, delete “as determined by the authority having jurisdiction”.

(ttt) In Section 6.9.5.2, delete “if required by the authority having jurisdiction”.

(uuu) In Section 6.9.5.3, in Exception No. 2, delete “if” and substitute “where”.

(vvv) In Section 6.9.5.4, delete Exception No. 1.

(www) Amend Section 6.9.6.3 by deleting “permitted” and substituting “approved”.

(xxx) In Section 6.9.9.3, delete “if specifically permitted” and substitute “where specifically approved”.

(yyy) In Section 6.9.9.12, delete “if” and substitute “where”.

(zzz) Amend Section 6.9.9.14 by deleting “, as determined by the authority having jurisdiction” without substitution.

(aaaa) In Section 6.10.2, delete “or by other approved means”.

(bbbb) In Section 6.11.2, delete “NFPA standards” and substitute “rules of the commission”.

(cccc) Amend Section 6.13.2 by deleting “in accordance with NFPA 601, Standard for Security Services in Fire Loss Prevention”.

(dddd) Amend Section 6.15.2.1 by deleting the third sentence without substitution.

(eeee) In Section 6.15.2.6, delete means number three without substitution.

(ffff) In Section 6.15.3.3, delete “Unless otherwise required by the authority having jurisdiction”.

(gggg) In Section 6.15.3.9, delete the exception without substitution.

(hhhh) In Section 6.15.5.3, after “with”, delete “applicable NFPA standards” and substitute “this standard”.

(iiii) Amend Section 6.15.6.2 by deleting the exception without substitution.

(jjjj) In Section 6.15.7.2, delete the exception without substitution.

(kkkk) In Section 6.16.4.5, delete the exception without substitution.

(llll) In Section 7.1.1, after “by”, delete “the authority having jurisdiction or other governing codes or standards” and substituting “this standard”.

(mmmm) Delete Section 7.1.5 without substitution.

(nnnn) Delete Section 7.4.2.2 in its entirety without substitution.

(oooo) In Section 7.4.2.4, delete “if” and substitute “where”.

(pppp) Amend Section 7.4.2.5 by deleting “when approved by the authority having jurisdiction” without substitution.

(qqqq) Delete Section 7.4.3.3 in its entirety without substitution.

(rrrr) In Section 7.4.3.4, delete “when approved by the authority having jurisdiction” without substitution.

(ssss) In Section 7.4.3.4.1, delete “if approved by the authority having jurisdiction” without substitution.

(tttt) Delete Section 7.4.5 in its entirety without substitution.

(uuuu) Amend Section 7.5.3 by deleting “the polar dispersion requirements of ANSI/UL 1971, Standard for Safety Signaling Devices for Hearing Impaired, or equivalent” and substituting “applicable rules of the Commission”.

(vvvv) Delete Section 7.5.4.3 in its entirety without substitution.

(wwww) Delete Section 7.6 in its entirety without substitution.

(xxxx) Delete Section 7.8.2.1 in its entirety without substitution.

(yyyy) In Section 7.9.3.1, delete “unless otherwise permitted by the authority having jurisdiction” without substitution.

(zzzz) Amend Section 7.10 to read as follows: Annunciators, information display systems, and controls for portions of the fire alarm system provided for use by the fire service shall be designed, arranged and located after consultation

with the responding fire department.

(aaaaa) Delete Section 8.2.3 in its entirety without substitution.

(bbbbb) Delete Section 8.2.4.1 in its entirety without substitution.

(ccccc) Amend Section 8.2.5.1 by deleting “construction, fire protection, restricted access, emergency lighting, and power facilities requirements of the latest edition of ANSI/UL 827, Standard for Safety Central-Station Alarm Services” and substituting “the rules of the Commission”.

(ddddd) Amend Section 8.2.5.2 by deleting “construction, fire protection, restricted access, emergency lighting, and power facilities requirements of the latest edition of ANSI/UL 827, Standard for Safety Central-Station Alarm Services” and substituting “the rules of the Commission”.

(eeeee) Amend Section 8.2.7.1.2(4) to read as follows: Provide immediate notice to the subscriber and the authority having jurisdiction.

(fffff) Amend Section 8.2.7.2.1(4) to read as follows: Report all delinquencies to the subscriber and the authority having jurisdiction as quickly as practicable.

(ggggg) Amend Section 8.2.7.3(3) to read as follows: Notify the fire department as quickly as practicable.

(hhhhh) Amend Section 8.2.7.3(5) to read as follows: When service has been restored, provide notice to the subscriber and the authority having jurisdiction as to the nature of the signal, the time of occurrence, and the restoration of service when equipment has been out of service for 8 hours or more.

(iiiiii) Amend Section 8.2.7.4(3) to read as follows: Provide notice to the subscriber and the authority having jurisdiction as to the nature of the interruption, the time of occurrence, and the restoration of service, when the interruption is more than 8 hours.

(jjjjj) Amend Section 8.2.8.3 to read as follows: The central station shall furnish reports of signals received to the authority having jurisdiction immediately upon request.

(kkkkk) In Section 8.3.4.1.3, delete the exception without substitution.

(lllll) In Section 8.3.4.1.4, insert “approved” before “private-mode” and delete all text after “appliances”.

(mmmmm) In Section 8.3.4.6.3, insert “and” before “operate”, delete the “,” after “signals”, and delete “and take such action as shall be required by the authority

having jurisdiction” without substitution.

(nnnnn) Amend Section 8.3.5.1.2 by deleting “or” and substituting “and”.

(ooooo) In Section 8.3.5.2.1, delete “designated by the authority having jurisdiction” without substitution.

(ppppp) Amend Section 8.3.5.2.2 by deleting “or” and substituting “and”.

(qqqqq) Amend Section 8.3.5.3 by deleting “or other locations accepted by the authority having jurisdiction”.

(rrrrr) In Section 8.3.5.4, delete “shall be accepted by the authority having jurisdiction and” without substitution.

(sssss) Amend Section 8.3.5.6.1(1) to read as follows: Immediately notify the fire department and the plant fire brigade.

(ttttt) In Section 8.3.5.6.2, number one, delete “or other means accepted by the authority having jurisdiction” without substitution.

(uuuuu) Amend Section 8.3.6.3 to read as follows: The central station shall furnish reports of signals received to the authority having jurisdiction immediately upon request.

(vvvvv) Delete Section 8.4 in its entirety without substitution.

(wwwww) Delete Section 8.5.2.2 in its entirety without substitution.

(xxxxx) Amend Section 8.5.3.3.4 by deleting “Unless accepted by the authority having jurisdiction,”.

(yyyyy) Delete Section 8.5.4 in its entirety without substitution.

(zzzzz) Delete Section 9.1.5 in its entirety without substitution.

(aaaaa) Amend Section 9.2.1 by deleting “this chapter to provide reliable transmission and receipt of fire alarms in a manner acceptable to the authority having jurisdiction” and substituting “local ordinance”.

(bbbbb) Delete Section 9.3 Management and Maintenance in its entirety and substitute “Management and Maintenance shall be in accordance with local ordinance and Chapter 10”.

(ccccc) Delete Section 9.4.2 Public Accessible Fire Service Boxes (Street Boxes) and substitute “Fire service boxes shall be installed in accordance with local ordinance.”

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(ddddd) Delete Section 9.4.3.1.2 in its entirety without substitution.

(eeeee) In Section 9.4.3.3.1, delete the exception without substitution.

(fffff) Amend Section 9.4.3.3.2 by deleting everything after “building”.

(ggggg) In Section 9.4.3.3.3, after “system”, delete “where permitted by the authority having jurisdiction”.

(hhhhh) Amend Section 9.4.3.3.4 to read as follows: Where 9.4.3.3.3 is applied, the box shall be equipped with a signal light to differentiate between automatic and manual operation, unless local outside alarms at the protected property serve the same purpose.

(iiiiii) Amend Section 9.4.3.3.5 to read as follows: The transmitting device shall be located after consultation with the fire department.

(jjjjj) In Section 9.4.3.3.9, delete the last sentence without substitution.

(kkkkk) Amend Section 9.4.3.3.10 by deleting “authority having jurisdiction” and substituting “fire department”.

(lllll) Amend 9.5.1.7 by deleting “, NFPA 110, Standard for Emergency Standby Power Systems, and NFPA 1221, Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems”.

(mmmmm) Delete Section 9.5.1.9 in its entirety without substitution.

(nnnnn) Delete the text of Section 9.7.2.1.1 and substitute “Outdoor circuitry shall be in accordance with the Indiana Electrical Code.”.

(ooooo) Delete Section 10.1.3 in its entirety without substitution.

(ppppp) Insert Section 10.1.5 to read as follows: Inspection, testing, and maintenance shall be performed by trained persons.

(qqqqq) Amend Section 10.2.1.2 to read as follows: Impairments. Impairments shall comply with the Indiana Fire Code.

(rrrrr) Delete Section 10.2.2.2 without substitution.

(sssss) In Section 10.3.1, delete all the text after “Table 10.3.1”.

(ttttt) In Section 10.3.1, in the exception, delete “if” and

substitute “where”.

(uuuuu) Amend Section 10.4.2.1 to read as follows: When requested by the authority having jurisdiction, the specifications, wiring diagrams, and floor plans that were submitted for state construction design release shall be provided to the authority having jurisdiction prior to inspection of the central station facility.

(vvvvv) In Section 10.4.3, delete all the text after “Table 10.4.3”.

(wwwww) In Section 10.4.3, in the exception, delete “if” and substitute “when”.

(xxxxx) Amend Section 10.4.3.2.2 by inserting, after the first sentence, “All smoke detectors in the system shall be sensitivity tested within the same calendar week.”.

(yyyyy) Amend Section 10.4.3.2.3 by deleting “(or 4 percent obscuration light gray smoke, if not marked)” without substitution.

(zzzzz) In Section 10.4.3.3, after “by”, delete “the applicable NFPA standards” and substitute “this standard”.

(aaaaa) Delete Section 10.4.3.4.1 in its entirety without substitution.

(bbbbb) Delete Section 10.4.3.4.2 in its entirety without substitution.

(ccccc) Delete Section 10.4.3.4.3 in its entirety without substitution.

(ddddd) Delete Section 10.4.5 in its entirety without substitution.

(eeeee) Delete Section 10.4.6 in its entirety without substitution.

(ffffff) Delete Section 10.4.7 in its entirety without substitution.

(ggggg) In Section 10.4.9.2, delete the exception.

(hhhhh) Amend Section 10.6.1 by deleting “approved by the authority having jurisdiction” without substitution.

(iiiiii) Delete Chapter 11 in its entirety and substitute the following: Single and Multiple-Station Alarms. Single and multiple station alarms shall be installed in occupancies in Class 1 structures as required in the Indiana Building Code, the Indiana Fire Code, and IC 22-11-18, and in accordance with Chapters 4 through 10 of this standard. (*Fire Preven-*

tion and Building Safety Commission; 675 IAC 28-1-28)

675 IAC 28-1-29 (Reserved)

675 IAC 28-1-30 NFPA 82 standard on incinerators, waste and linen handling systems and equipment

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 30. (a) That certain document, being titled NFPA 82 - Standard on Incinerators, Waste and Linen Handling Systems and Equipment, 2004 Edition, published by National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101 be and the same is adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 82 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 31.
- (2) NFPA 54.
- (3) NFPA 90A.
- (4) NFPA 211.
- (5) NFPA 259.
- (6) NFPA 5000.
- (7) ASTM C27.
- (8) ASTM C199.
- (9) ASHRAE handbook HVAC Systems and Equipment, 2000.

(c) The following documents referenced in NFPA 82 are adopted and are enforceable:

- (1) NFPA 13, as adopted in 675 IAC 13-1-8.
- (2) NFPA 58, as adopted in 675 IAC 22-2.2-14.
- (3) NFPA 70, as adopted in 675 IAC 17.

(d) Amend Chapter 3 as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying

mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(2) Add the following definitions:

BUILDING CODE means the Indiana Building Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

ELECTRICAL CODE means the Indiana Electrical Code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference and amended at 675 IAC 22-2.3.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

(e) Chapter 2 and Annex A are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code.

(Fire Prevention and Building Safety Commission; 675 IAC 28-1-30)

675 IAC 28-1-31 NFPA 86; standard for ovens and furnaces

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 31. (a) That certain standard, being titled as NFPA 86, Ovens and Furnaces, 2003 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 86 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 30.
- (2) NFPA 31.
- (3) NFPA 50A.
- (4) NFPA 54.
- (5) NFPA 79.

- (6) NFPA 91.
- (7) NFPA 750.
- (8) ANSI Z50.1.
- (9) ASME B31.1.
- (10) ASME B31.3.
- (11) ASTM D396.

(c) The following documents are adopted and are enforceable:

- (1) NFPA 10, as adopted in section 2 of this rule.
- (2) NFPA 11, as adopted in section 3 of this rule.
- (3) NFPA 12, as adopted in section 4 of this rule.
- (4) NFPA 13, as adopted in 675 IAC 13-1-8.
- (5) NFPA 15, as adopted in section 8 of this rule.
- (6) NFPA 17, as adopted in section 9 of this rule.
- (7) NFPA 17A, as adopted in section 10 of this rule.
- (8) NFPA 25, as adopted in section 12 of this rule.
- (9) NFPA 34, as adopted in section 14 of this rule.
- (10) NFPA 50, as adopted in section 16 of this rule.
- (11) NFPA 50B, as adopted in section 17 of this rule.
- (12) NFPA 58, as adopted at 675 IAC 22-2.2-14.
- (13) NFPA 70, as adopted in 675 IAC 17.
- (14) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) Amend Section 1.1.4 to read as follows: This standard also applies to listed bakery ovens and requires all bakery ovens to be listed.

(e) Amend Section 1.3.2 by deleting all the text and substituting "This entire standard shall apply to new installations or as required otherwise under the rules of the commission."

(f) Amend Section 1.4.1 by deleting "Unless otherwise specified". Delete "approved" and substitute "released". Delete the last sentence in its entirety without substitution.

(g) Delete Section 1.4.2 in its entirety without substitution.

(h) Delete Section 1.4.3 in its entirety without substitution.

(i) Amend Chapter 3 to read as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local

unit of government empowered by law to administer and enforce the rules of the commission.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(2) Add the following definitions:

BUILDING CODE means the building code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

FIRE CODE means the Indiana Fire Code.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference at 675 IAC 22-2.3 and amended.

MECHANICAL CODE means the mechanical code (675 IAC 18 or the applicable rules of the predecessor to the commission) in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

NFPA 70, National Electrical Code means the Indiana Electrical Code (675 IAC 17).

PLUMBING CODE means the plumbing code (675 IAC 13 or the applicable rules of the predecessor to the commission) in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

QUALIFIED means having successfully completed a course of instruction related to the equipment being installed, serviced, or repaired.

TRAINED means one who has undergone the instruction necessary to design, install, and perform testing, maintenance, and inspection.

(j) Amend Section 4.1.1 to read as follows: Before new equipment is installed or existing equipment remodeled, complete plans, sequence of operations, and specifications shall be submitted in accordance with 675 IAC 12-6.

(k) Delete Sections 4.1.1.1 through 4.1.3.3 without substitution.

(l) Delete Section 4.2.1 without substitution.

(m) Amend Section 5.1.3.1 to read as follows: Furnaces shall be located to minimize exposure to power equipment, process equipment, and sprinkler risers. Unrelated stock and combustible materials shall be maintained at not less than two and one-half (2½) feet (0.76 m) from a furnace, a furnace heater, or ductwork.

(n) Amend Section 5.2.5.2 by deleting “in accordance with applicable federal, state, and local regulations. (See also Section 14.2)” without substitution.

(o) Amend Section 5.2.13 by deleting “, subject to approval by the authority having jurisdiction.” without substitution.

(p) Amend Section 5.4.3.1 by deleting the text and substituting “Ventilating and exhaust systems shall be installed in accordance with the applicable rules of the commission, including, without limitations, the mechanical code.”.

(q) In the third line of Section 5.4.3.3, delete “noncombustible” and insert “listed”.

(r) Amend Section 5.4.4.1 by deleting “in accordance with all applicable codes” without substitution.

(s) Delete Section 6.2.3.2 without substitution.

(t) Amend Section 6.2.4.3 to read as follows: Piping from the point of delivery to the equipment isolation valve shall comply with the Indiana Plumbing Code (675 IAC 16) and the Indiana Mechanical Code (675 IAC 18).

(u) Amend Section 6.2.5.2 to read as follows: Piping shall be sized to provide flow rates and pressure to maintain a stable flame over the burner operating range.

(v) Amend Section 6.2.7.3.4 by deleting, in the exception, “require approval” and substituting “be approved”.

(w) Amend Section 6.3.1 by deleting “as specified by ASTM D396, Standard Specifications for Fuel Oils”.

(x) Amend Section 6.3.4.1 to read as follows: Storage tanks, their installation, and their supply piping materials shall comply with the requirements of this standard, the Indiana Fire Code and the Indiana Mechanical Code (675 IAC 18).

(y) Amend Section 6.3.5.2 to read as follows: Equipment piping shall be listed for the use.

(z) Amend Section 6.5.1 to read as follows: Fuel-fired equipment shall be vented and shall be sized to provide flow

rates and pressure to maintain a stable flame over the burner operating range in accordance with the Indiana Mechanical Code (675 IAC 18).

(aa) Amend Section 6.7.2.1 to read as follows: Piping and fittings shall be listed for the use. Relief valves shall be provided where required by this standard or the Indiana Mechanical Code (675 IAC 18).

(bb) Amend Section 7.2.1 by deleting, in the exception, “require approval” and inserting “be approved”.

(cc) Amend Section 7.14.6 by deleting, in the exception, “tested” and inserting “listed”.

(dd) Amend Section 9.2.1.12 by deleting, in the exception, “subject to the approval of” and inserting “when approved by”.

(ee) In Section 9.3.5.2, delete the last sentence.

(ff) Amend Section 9.3.5.5 to read: Locations for compressed gas tanks and cylinders shall be in accordance with the Indiana Building Code (675 IAC 13) and the Indiana Fire Code.

(gg) Amend Section 9.3.6.2 by deleting “by the agency responsible for rating them”.

(hh) Amend Section 9.3.8.3 by deleting “in accordance with ASME B31.3, Process Piping” and substituting “listed for their use”.

(ii) Amend Section 11-1.4 to read as follows: Dip tanks and drain boards included in the oven enclosure shall be protected in accordance with NFPA 34, Standard for Dipping and Coating Using Flammable or Combustible Liquids, and Chapter 15 of the Indiana Fire Code.

(jj) Amend Section 11.1.5.1.2 by deleting “in accordance with ASME B31.3, Process Piping” and substituting “listed for their use”.

(kk) Amend Section 11.1.5.1.4 by deleting “applicable NFPA standards” and substituting “the Building Code and Fire Code”.

(ll) Amend Section 11.1.5.1.5(4) by deleting “NFPA 30, Flammable and Combustible Liquids Code” and substituting “the Fire Code”.

(mm) Amend Section 11.1.6.1.3 by deleting “in accordance with ASME B31.3, Process Piping” and substituting “listed for their use”.

(nn) Amend Section 13.2.7 by deleting “designed in accordance with fire protection engineering principles. (See

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Annex F, Steam Extinguishing Systems.)” and substituting “in accordance with 675 IAC 12-6-11.”.

(oo) In Section 13.4, delete “to the authority having jurisdiction for review and approval” and substitute “in accordance with 675 IAC 12”.

(pp) Amend Section 14.1.2 by inserting “as approved by the authority having jurisdiction” after “procedures”.

(qq) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-31*)

675 IAC 28-1-32 (Reserved)

675 IAC 28-1-33 (Reserved)

675 IAC 28-1-34 NFPA 385; standard for tank vehicles for flammable and combustible liquids

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 34. (a) That certain document, being titled NFPA 385-Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference except as revised hereafter.

(b) The following documents referenced in NFPA 385 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 30.
- (2) ANSI Z 535.1.
- (3) ASTM B209.
- (4) ASTM D5.
- (5) ASTM D323.
- (6) Title 49, Code of Federal Regulations.

(c) The following documents referenced in NFPA 385 are adopted and are enforceable:

- (1) NFPA 10, as adopted in section 2 of this rule.
- (2) NFPA 58, as adopted in 675 IAC 22-2.2-14.
- (3) NFPA 70, as adopted in 675 IAC 17.
- (4) NFPA 407, as adopted section 36 of this rule.
- (5) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) Amend Section 1-2 as follows:

- (1) Amend the following definitions to read as follows:
APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

COMBUSTIBLE LIQUID means a liquid having a closed cup flash point as specified by the Indiana Fire Code (675 IAC 22-2.3).

FLAMMABLE LIQUID means a liquid having a closed cup flash point as specified by the Indiana Fire Code (675 IAC 22-2.3).

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LIQUID means a material having a melting point as specified by section 2702 of the Indiana Fire Code (675 IAC 22-2.3).

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(2) Add the following definitions:

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference at 675 IAC 22-2.3 and amended.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

(e) Delete Section 4-1.1 without substitution.

(f) Chapter 7 and the appendices are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-34*)

675 IAC 28-1-35 (Reserved)

675 IAC 28-1-36 NFPA 407; standard for aircraft fuel servicing

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 36. (a) That certain standard, being titled as NFPA 407, 2001 Edition, Aircraft Fuel Servicing, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 407 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 30.
- (2) NFPA 410.
- (3) NFPA 415.
- (4) NFPA 418.
- (5) ANSI B 31.3.
- (6) API Bulletin 1529.
- (7) ASTM D380.
- (8) AWS A 5.10.
- (9) UL 913.
- (10) Title 49, Code of Federal Regulations.

(c) The following documents referenced in NFPA 407 are adopted and are enforceable:

- (1) NFPA 10, as adopted in section 2 of this rule.
- (2) NFPA 70, as adopted in 675 IAC 17.
- (3) NFPA 385, as adopted in section 34 of this rule.

(d) When the provisions of the Indiana Fire Code apply, they shall take precedence over the provisions of this standard.

(e) Amend Chapter 3 to read as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

DIVISION OF FIRE AND BUILDING SAFETY means that division of the Indiana Department of Homeland Security.

LABELED means equipment or materials to which has

been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(2) Add the following definitions:

BUILDING CODE means the building code in effect in Indiana at the time of construction, remodeling, alteration, addition, or repair of the structure.

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

FIRE CODE means the Indiana Fire Code.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference in 675 IAC 22-2.3-1 and amended.

NFPA 30 means the Indiana Fire Code.

NFPA 70 means the Indiana Electrical Code (675 IAC 17).

QUALIFIED means having successfully completed a course of instruction related to the equipment being installed, serviced, or repaired.

(f) In the second line of Section 4.3.1.1, delete "safe" and insert "listed".

(g) In Section 4.3.14.4, delete "adequately".

(h) Amend Section 4.4.1 to read as follows: Plans and specifications shall be filed as required by 675 IAC 12.

(i) In Section 4.4.2, delete "and approve" and replace "shall" with "may".

(j) In Section 4.4.4.2, delete the first sentence and substitute the following: Clearances required from runways, taxiways, and other aircraft movement and servicing areas to any aboveground fuel storage or fuel transfer equipment shall be in accordance with national and international standards establishing clearances from obstructions.

(k) Delete Section 4.4.6.4 and substitute to read as follows: Piping, valves, and fittings shall be listed for their use.

(l) Amend Section 4.4.11.1 to read as follows: Ramps used for aircraft fueling shall slope away from buildings and

loading walkways at a grade of not less than one (1) percent for the first fifty (50) feet (15,240 mm). The balance of such ramps shall slope to a drainage system at a grade not less than one-half percent (.5%). When drainage inlets are provided, they shall be at least fifty (50) feet (15,420 mm) from buildings and loading walkways.

(m) In Section 4.4.13, add the following sentence to the end: All test results shall be submitted to the authority having jurisdiction before the system is placed in service.

(n) Amend Section 4.5.1.1 to read as follows: Fueling on rooftop heliports shall not be permitted.

(o) Amend Section 4.5.2.1 to read as follows: Basic Construction and Protection Requirements. In addition to the special requirements of this chapter, heliports shall comply with the Indiana Fire Code (675 IAC 22) and the Indiana Building Code (675 IAC 13).

(p) In Section 4.5.4, amend the first sentence to read as follows: Piping above grade shall be steel and shall be cased or shall be installed in a duct or chase.

(q) Amend Section 4.5.10 to read as follows: Fixed fire protection systems shall be in accordance with the Indiana Fire Code (675 IAC 22).

(r) Amend Section 4.6.1 to read as follows: Self-service fueling shall be permitted, subject to the requirements of this standard and the Indiana Fire Code (675 IAC 22).

(s) Amend Section 4.6.3.4 to read as follows: Dispensing devices shall be protected in accordance with section 2206.7.3 of the Indiana Fire Code (675 IAC 22).

(t) Amend Section 5.2.6 to read as follows: Unauthorized discharges of hazardous materials shall be reported and documented in accordance with the Indiana Fire Code (675 IAC 22) Chapter 27.

(u) Amend Section 5.3.5 to read as follows: Records shall be kept of tests required by this standard. These records shall be made available to the inspection authority upon request.

(v) Delete Section 5.8.4 without substitution.

(w) In Section 5.13.6, delete "they might be expected to use".

(x) Chapter 2 and the annexes are not adopted as part of this standard and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-36*)

675 IAC 28-1-37 (Reserved)

675 IAC 28-1-38 NFPA 704; standard system for the identification of the fire hazards of materials for emergency response

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 38. (a) That certain standard, being titled as NFPA 704, Identification of the Fire Hazards of Materials for Emergency Response, 2001 Edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, be and the same is hereby adopted by reference, as if fully set out in this section except as revised herein.

(b) The following documents referenced in NFPA 704 are not adopted, are not enforceable, and are for information purposes only:

(1) NFPA 495.

(2) ASTM D86.

(3) ASTM D92.

(4) Process Safety Progress, Vol. 18, No. 4, 1999.

(5) UN Manual of Tests Criteria.

(6) UN Recommendations on the Transport of Dangerous Goods, Model Regulations.

(7) Title 49.

(c) NFPA 495 as adopted at 675 IAC 26-3-1 is enforceable as referenced in NFPA 704.

(d) Amend Chapter 3 to read as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

(1) Investigation or tests conducted by nationally recognized authorities; or

(2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or

(3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

(2) Add the following definitions:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

INDIANA FIRE CODE means the International Fire Code, 2000 Edition, as adopted by reference in 675 IAC 22-2.3-1 and amended.

(e) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-38*)

675 IAC 28-1-39 NFPA 1123; code for fireworks display

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-11-14-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 39. (a) That certain standard, being titled as NFPA 1123, Code for Fireworks Display, 2000 Edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269, be and the same is hereby adopted by reference, as if fully set out in this section except as revised hereafter.

(b) The following documents referenced in NFPA 1123 are not adopted, are not enforceable, and are for information purposes only:

- (1) NFPA 160.
- (2) NFPA 306.
- (3) NFPA 1122.
- (4) NFPA 1124.
- (5) Title 16, Code of Federal Regulations.
- (6) Title 27, Code of Federal Regulations.
- (7) Title 49, Code of Federal Regulations.

(c) NFPA 1126, as adopted in 675 IAC 22-2.2-26 and referenced in NFPA 1123, is adopted and is enforceable.

(d) Delete Section 1.2.2 without substitution.

(e) Delete Section 1.2.3 without substitution.

(f) Amend Section 1.3 to read as follows: **Equivalency.** This standard is not intended to prevent the use of systems, methods, or devices that provide protection equivalent to the provisions of this code, provided the systems, methods, or devices are approved by the authority having jurisdiction.

(g) Amend Section 1-4 to read as follows:

(1) Amend the following definitions:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local

unit of government empowered by law to administer and enforce the rules of the commission.

LABELED means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization engaged in product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

LISTED means equipment or materials included in a list published by an organization engaged in product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(2) Add the following definition:

DIVISION OF FIRE AND BUILDING SAFETY means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to IC 10-19-2.

FIRE WATCH means a temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals for the purposes of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire, and notifying the fire department.

(h) Amend Section 2.1.3 by deleting the last sentence without substitution.

(i) In Section 2.2.4.3, delete Exception No. 1.

(j) Amend Section 3.1.1 by deleting the second and third sentences.

(k) Delete Section 3.1.3.2 without substitution.

(l) Amend Section 2.3.10 by deleting the exception.

(m) Amend Section 3.1.3.3 by deleting the exception.

(n) Amend Section 3.2.4 by deleting “unauthorized” and substituting “unapproved”.

(o) Amend Section 4.2.3 by deleting “material” and substituting “materials”.

(p) Amend Section 4.3.2 by deleting the exception.

(q) Amend Section 5.1.2 to read as follows: **Monitors** whose sole duty shall be the enforcement of crowd control shall be located around the display area.

(r) Amend Section 5.1.2.1 by deleting the second sentence.

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(s) Amend Section 5.1.4 to read as follows: Wherever any hazardous condition exists, the fireworks display shall be postponed until the condition is corrected.

(t) Amend Section 5.1.4.1 to read as follows: Whenever the lack of crowd control poses a hazard, the fireworks display shall be discontinued immediately until such time as the situation is corrected.

(u) Amend Section 5.1.4.2 to read as follows: If high winds, precipitation, or other adverse weather conditions prevail such that a significant hazard exists, the fireworks display shall be postponed until weather conditions improve to a reasonable level.

(v) In Section 5.3.1, delete “to the extent that it is practical”.

(w) Delete the text of Chapter 7 and substitute to read as follows:

7.1 Operator Qualifications.

7.1.1 The operator shall be approved in accordance with IC 22-11-14-2(a).

7.1.2 An operator shall provide evidence of actual experience as an operator or assistant as part of demonstrating competency to the authority having jurisdiction.

7.2 All assistants shall be at least eighteen (18) years of age.

7.3 The fireworks display company, municipality, fair association, amusement park, other organizations, or group of individuals shall obtain a permit in accordance with IC 22-11-14-2(a).

(x) Chapter 8 and the appendices are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-39*)

675 IAC 28-1-40 NFPA 2001; standard on clean agent fire extinguishing systems

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 10-19-2; IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7

Sec. 40. (a) Standard on Clean Agent Fire Extinguishing Systems, NFPA 2001, 2004 Edition, published by National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101 is adopted by reference except as revised hereafter.

(b) The following documents referenced in NFPA 2001 are not adopted, are not enforceable, and are for information purposes only:

- (1) ANSI B1.20.1.
- (2) ANSI C2.
- (3) ASME B31.1.

- (4) ASTM A120.
- (5) ASTM SI 10.
- (6) CGA C-6.
- (7) CAN/CSA-Z234.1.
- (8) IMO MSC/Circular 848.
- (9) ISO/IEC Guide 7
- (10) UL 2127.
- (11) UL 2166.
- (12) ULC S524-M91.
- (13) ULC S529-M87.
- (14) OSHA, Title 29 CFR.
- (15) Title 46 CFR, Part 72.
- (16) Title 46 CFR, Subchapter J.
- (17) Title 49 CFR, Parts 170-190.

(c) The following documents referenced in NFPA 2001 are adopted and are enforceable:

- (1) NFPA 70, as adopted in 675 IAC 17.
- (2) NFPA 72, as adopted in section 28 of this rule.
- (3) ASME Boiler and Pressure Vessel Code, as adopted at 680 IAC 2-1-1.

(d) Delete the last sentence of subsection 1.2.1 and substitute to read as follows: For alternate materials, methods, and design, see the General Administrative Rules (675 IAC 12-6-11).

(e) Amend the following definitions in Chapter 3 to read as follows:

APPROVED means acceptance by the authority having jurisdiction by one (1) of the following methods:

- (1) Investigation or tests conducted by nationally recognized authorities; or
- (2) Investigation or tests conducted by nationally recognized technical or scientific organizations; or
- (3) Nationally accepted principles.

The investigation, tests, or principles shall establish that the method, material, equipment, design, or type of construction is safe for its intended purpose.

AUTHORITY HAVING JURISDICTION means the Division of Fire and Building Safety or officer of a local unit of government empowered by law to administer and enforce the rules of the commission.

LISTED. Equipment or materials included in a list published by an organization engaged in product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(f) Add the following definitions to Chapter 3 as follows: **DIVISION OF FIRE AND BUILDING SAFETY** means the Division of Fire and Building Safety of the Indiana Department of Homeland Security created pursuant to

IC 10-19-2.

NFPA 70, National Electrical Code means the Indiana Electrical Code (675 IAC 17).

TESTING LABORATORY means an independent nationally recognized testing laboratory or other organization listed in the General Administrative Rules (675 IAC 12-6-11).

TRAINED means one who has undergone the instructions necessary to design, install, and perform the maintenance and recharge service.

(g) Amend subsection 1.4.2.2 to read as follows: Clean agents shall not be used on fires involving the following materials:

- (1) Certain chemicals or mixtures of chemicals, such as cellulose, nitrate, and gunpowder, that are capable of rapid oxidation in the absence of air.
- (2) Reactive metals, such as lithium, sodium, potassium, magnesium, titanium, zirconium, uranium, and plutonium.
- (3) Metal hydrides.
- (4) Chemicals capable of undergoing autothermal decomposition, such as certain organic peroxides and hydrazine.

(h) Delete subsection 4.1.1.2 in its entirety without substitution.

(i) Amend subsection 4.1.3.3, by deleting “suitable” and inserting “approved”.

(j) Amend subsection 4.1.4.3 to read as follows: The design pressure shall be suitable for the maximum pressure developed at one hundred thirty degrees Fahrenheit (130°F) (fifty-five degrees Celsius (55°C)) or at the maximum controlled temperature limit.

(k) Delete subsection 4.1.4.4 in its entirety without substitution.

(l) Amend subsection 4.2.1.3 to read as follows: Pipe identification shall not be painted over or removed.

(m) Amend subsection 4.2.3.2 to read as follows: Cast-iron fittings and Class 150 lb fittings shall not be used.

(n) Amend subsection 4.2.3.3 by deleting the first sentence.

(o) Delete the text of subsection 4.2.3.5 and substitute “Welding shall be performed in accordance with the commission rules on boilers and pressure vessels.”.

(p) Amend subsection 4.2.5.2 to read as follows: Approved corrosion-resistant materials or coatings shall be required in corrosive atmospheres.

(q) Amend subsection 4.3.1.2.1 by deleting “if acceptable to the authority having jurisdiction”.

(r) Delete subsections 5.1.1, 5.1.2, and 5.1.3 and substitute the following: Plans and specifications shall be filed as required by the General Administrative Rules (675 IAC 12).

(s) Amend subsection 5.2.1 to read as follows: System flow-calculations shall be performed using a calculation method listed. The system design shall be within the manufacturer’s listed limitations.

(t) Delete subsection 5.2.1.1 in its entirety without substitution.

(u) Delete subsection 5.2.4 in its entirety without substitution.

(v) Delete subsection 5.3.3 in its entirety without substitution.

(w) Amend subsection 5.7.1.2.1 to read as follows: The agent discharge shall be completed as quickly as possible to suppress the fire and limit the formation of decomposition and combustion products. In no case shall the discharge time exceed ten (10) seconds.

Exception: For inert gases that do not form decomposition products, the discharge time may be extended to achieve the design concentration within one (1) minute.

(x) Amend subsection 5.7.1.2.2 by deleting “or as otherwise required by the authority having jurisdiction” without substitution.

(y) Amend subsection 6.1.1 by deleting “competent” and substituting “trained”.

(z) Delete the last sentence of subsection 6.1.5 without substitution.

(aa) Amend the last sentence of subsection 6.2.2 by deleting “competent” and substituting “trained”.

(bb) Amend subsection 6.7.1 to read as follows: Only listed equipment and devices shall be used in the systems. The completed system shall be reviewed and tested to determine that the system has been properly installed and will function as specified.

(cc) Delete subsections 6.7.2.1, 6.7.2.2.1, and 6.7.2.2.2 in their entirety without substitution.

(dd) In subsection 6.7.2.3, delete “or other means” from the last sentence without substitution.

(ee) Delete subsection 6.7.2.2.8 in its entirety without

substitution.

(ff) Delete subsection 6.7.2.4.9 in its entirety and substitute to read as follows: The detectors shall be installed in accordance with the manufacturers' installation instructions.

(gg) Amend subsection 7.5.1.1 by deleting "requirements of the authority having jurisdiction" and inserting "rules of the commission".

(hh) Amend subsection 7.9.2.3 by deleting "or as otherwise required by the authority having jurisdiction".

(ii) Chapter 2 and the annexes are not adopted as part of this code and are intended for use as a guide, and the standards referenced therein are not enforceable as part of this code. (*Fire Prevention and Building Safety Commission; 675 IAC 28-1-40*)

SECTION 2. THE FOLLOWING ARE REPEALED: 675 IAC 13-1-4; 675 IAC 13-1-5; 675 IAC 13-1-9.5; 675 IAC 13-1-9.6; 675 IAC 13-1-22; 675 IAC 13-1-27; 675 IAC 13-1-28; 675 IAC 22-2.2-3; 675 IAC 22-2.2-4; 675 IAC 22-2.2-5; 675 IAC 22-2.2-6; 675 IAC 22-2.2-7; 675 IAC 22-2.2-8; 675 IAC 22-2.2-9; 675 IAC 22-2.2-10; 675 IAC 22-2.2-12; 675 IAC 22-2.2-13; 675 IAC 22-2.2-15; 675 IAC 22-2.2-16; 675 IAC 22-2.2-17; 675 IAC 22-2.2-18; 675 IAC 22-2.2-21; 675 IAC 22-2.2-23; 675 IAC 22-2.2-24; 675 IAC 22-2.2-25.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 17, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 19, Indianapolis, Indiana; AND on May 3, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Fire Prevention and Building Safety Commission will hold a public hearing on a proposed new rule and proposed amendments to 675 IAC.

The Fire Prevention and Building Safety Commission has the authority to adopt the proposed amendments under IC 22-13-2. The amendments will allow the use of the most current edition of each standard and will not result in any 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 W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David L. Hannum
Chairman
Fire Prevention and Building Safety Commission

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Proposed Rule
LSA Document #05-108

DIGEST

Amends 675 IAC 12 to make changes necessitated by the enactment of SEA 56-2005, to update the availability statement for the article, and to add Article 25, the Indiana Fuel Gas Code and Article 26, the Indiana Explosive Materials Code, to the list of commission rules in 675 IAC 12-1.1-5. Amends 675 IAC 12-3 to amend fee schedules. Amends 675 IAC 12-5 to revise the rules for variances. Amends 675 IAC 12-6 to amend and clarify the filing process for plans, exemptions from filing, and the duration of a construction design release. Amends 675 IAC 12-8 to revise the Indiana Building Rehabilitation Standard. Amends 675 IAC 12-13 to amend the scope of projects to which Rule 13 may be applied. Effective 30 days after filing with the Secretary of State.

675 IAC 12-1.1-1	675 IAC 12-6-15
675 IAC 12-1.1-2	675 IAC 12-6-16
675 IAC 12-1.1-3	675 IAC 12-6-18
675 IAC 12-1.1-4	675 IAC 12-6-19
675 IAC 12-1.1-5	675 IAC 12-6-20
675 IAC 12-3-2	675 IAC 12-6-21
675 IAC 12-3-6	675 IAC 12-6-23
675 IAC 12-3-8	675 IAC 12-7-1
675 IAC 12-3-11	675 IAC 12-7-2
675 IAC 12-3-13	675 IAC 12-7-3
675 IAC 12-3-14	675 IAC 12-7-4
675 IAC 12-3-15	675 IAC 12-7-5
675 IAC 12-4-4	675 IAC 12-8-1
675 IAC 12-4-5	675 IAC 12-8-3
675 IAC 12-4-7	675 IAC 12-8-4
675 IAC 12-4-11	675 IAC 12-8-5
675 IAC 12-5-2	675 IAC 12-8-6
675 IAC 12-5-4	675 IAC 12-8-7
675 IAC 12-5-5	675 IAC 12-8-8
675 IAC 12-5-6	675 IAC 12-8-9
675 IAC 12-5-9	675 IAC 12-8-10
675 IAC 12-6-2	675 IAC 12-8-11
675 IAC 12-6-3	675 IAC 12-8-12
675 IAC 12-6-4	675 IAC 12-8-13
675 IAC 12-6-6	675 IAC 12-8-14
675 IAC 12-6-7	675 IAC 12-8-15
675 IAC 12-6-8	675 IAC 12-8-17
675 IAC 12-6-9	675 IAC 12-8-18
675 IAC 12-6-10	675 IAC 12-8-19
675 IAC 12-6-11	675 IAC 12-8-20
675 IAC 12-6-12	675 IAC 12-8-21
675 IAC 12-6-14	675 IAC 12-9-1

675 IAC 12-9-2	675 IAC 12-11-7
675 IAC 12-9-3	675 IAC 12-11-8
675 IAC 12-9-4	675 IAC 12-11-9
675 IAC 12-9-5	675 IAC 12-12-1
675 IAC 12-9-6	675 IAC 12-12-2
675 IAC 12-9-7	675 IAC 12-12-3
675 IAC 12-9-9	675 IAC 12-12-4
675 IAC 12-10-8	675 IAC 12-12-5
675 IAC 12-10-9	675 IAC 12-12-6
675 IAC 12-11-1	675 IAC 12-12-7
675 IAC 12-11-2	675 IAC 12-13-2
675 IAC 12-11-3	675 IAC 12-13-3
675 IAC 12-11-4	675 IAC 12-13-4
675 IAC 12-11-5	675 IAC 12-14-1
675 IAC 12-11-6	

SECTION 1. 675 IAC 12-1.1-1 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-1.1-1 Title; availability

Authority: IC 22-13-2-13

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 1. (a) This article shall be known as the general administrative rules for **the following:**

- (1) The ~~Indiana fire and building services department commission.~~
- (2) The **division.**

(b) This article is available for ~~purchase from at the Division of Fire and Building Services Department, 402 Safety, 302 West Washington Street, Room 243, W246, Indianapolis, Indiana 46204.~~ *(Fire Prevention and Building Safety Commission; 675 IAC 12-1.1-1; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2681, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2081; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 2. 675 IAC 12-1.1-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-1.1-2 Purpose

Authority: IC 22-13-2-13

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 2. The purpose of this article (~~675 IAC 12~~) is to provide for administrative procedures and general provisions for **the following:**

- (1) The ~~Fire Prevention and Building Safety commission. and~~
- (2) The ~~Fire and Building Services Department and its various offices and divisions.~~ **division.**

(Fire Prevention and Building Safety Commission; 675 IAC 12-1.1-2; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2681, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document

#87-53 was filed Jul 17, 1987.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 3. 675 IAC 12-1.1-3 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-1.1-3 Statutory authority

Authority: IC 22-13-2-13

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 3. ~~Indiana Code Articles IC 22-11 22-12, 22-13, 22-14 and through IC 22-15~~ establish the authority, power, and duties of **the following:**

- (1) The ~~Fire Prevention and Building Safety commission. and~~
- (2) The ~~Fire and Building Services Department and its various offices and divisions.~~ **division.**

(Fire Prevention and Building Safety Commission; 675 IAC 12-1.1-3; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2681, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 4. 675 IAC 12-1.1-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-1.1-4 Definitions

Authority: IC 22-13-2-13

Affected: IC 10-19-7; IC 22-11; IC 22-12-1; IC 22-12-2-1; IC 22-13; IC 22-14; IC 22-15

Sec. 4. (a) The definitions in this section apply throughout ~~all rules of the Commission (675 IAC).~~ **this title.**

(b) "Commission" refers to the fire prevention and building safety commission as established by IC 22-12-2-1.

(c) "Department" refers to the ~~Fire and Building Services Indiana~~ department of **homeland security** as established by ~~IC 22-12-5-1.~~ **IC 10-19-7.**

(d) "Division" refers to the **division of fire and building safety of the department.**

~~(d) (e)~~ (e) "Executive director" refers to the executive director of the department. ~~appointed pursuant to IC 22-12-5-4.~~

~~(e) (f)~~ (f) "Rules of the commission" means all rules, including documents incorporated by reference, **which that:**

- (1) have been adopted by the commission; and
- (2) are found in ~~675 IAC.~~ **this title.**

As appropriate by the context, the term "rule of the Commission" means any applicable section or sections of a rule.

~~(f)~~ "Secretary" refers to the **Executive Director of the Department** serving as secretary of the Commission pursuant to

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~~IC 22-12-5-4(c).~~

(g) All definitions found in IC 22-12-1 apply to all rules of the commission except where the context requires otherwise. *(Fire Prevention and Building Safety Commission; 675 IAC 12-1.1-4; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2681, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 5. 675 IAC 12-1.1-5 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-1.1-5 Organization of the rules of the commission

Authority: IC 22-13-2-13

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 5. The rules of the commission are organized in ~~Title 675 of the Indiana Administrative Code this title~~ as follows:

- (1) ~~Articles 675 IAC 1 through 675 IAC 11: Repealed.~~
- (2) ~~This article: 12 Administration.~~
- (3) ~~Article 675 IAC 13: Building Codes.~~
- (4) ~~Article 675 IAC 14: One and Two Family Dwelling Codes. Code.~~
- (5) ~~Article 675 IAC 15: Industrialized Building Systems.~~
- (6) ~~Article 675 IAC 16: Plumbing Codes. Code.~~
- (7) ~~Article 675 IAC 17: Electrical Codes.~~
- (8) ~~Article 675 IAC 18: Mechanical Codes. Code.~~
- (9) ~~Article 675 IAC 19: Energy Conservation Codes.~~
- (10) ~~Article 675 IAC 20: Swimming Pool Codes. Code.~~
- (11) ~~Article 675 IAC 21: Safety Code Codes for Elevators, Escalators, Manlifts and Hoists.~~
- (12) ~~Article 675 IAC 22: Fire Prevention Codes.~~
- (13) ~~Article 675 IAC 23: Amusement Devices. Recreational Facilities.~~
- (14) ~~Article 675 IAC 24: Supplementary Fire Safety Rules.~~
- (15) ~~675 IAC 25: Fuel Gas Code.~~
- (16) ~~675 IAC 26: Regulated Explosives; Use and Licensure.~~
- (17) ~~675 IAC 27: Indiana Visitability Rule for One and Two Family Dwellings and Townhouses.~~

(Fire Prevention and Building Safety Commission; 675 IAC 12-1.1-5; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2682, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2081; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 6. 675 IAC 12-3-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-3-2 Schedule of fees for site built construction

Authority: IC 22-12-6-6

Affected: IC 22-12-6-4; IC 22-15-3-2

Sec. 2. (a) Every application for construction design release (ACDR) required by 675 IAC 12-6 shall be accompanied by payment to the fire and building services fund in an amount prescribed in this section.

(b) The design release fees shall be as follows:

All Projects	Amount
Filing Fee	\$69 \$75
plus	
Processing Fee	\$69 \$75 minimum*
TOTAL	\$138 \$150 minimum*

*The minimum processing fee only applies where the categorical processing fee is less than ~~\$69~~: \$75.

(c) The categorical processing fees shall be as follows:

Category A (Normal Occupancy): All buildings and structures not specifically listed in Categories B, C, D, ~~and E, G, H, and I.~~ The fee is ~~\$0.040~~ \$0.050 times the gross square feet of floor area.

Category B (Minimal Occupancy—Area related): ~~Generating plants;~~ Livestock sales, hangars, open parking structures, truck freight terminals, warehouses, refrigerated storage, **bulk product processing plants**, and similar uses. The fee is ~~\$0.020~~ \$0.030 times the gross square feet of floor area.

Category C (Cost related): Remodeling and renovation (no additions). The fee is ~~\$0.0020~~ \$0.0030 times the ~~construction cost. Not to exceed fees as specified for Categories A and B; calculated on the basis of the floor area of each affected story; total square footage of the remodeling and renovation.~~

Category D (Minimal Occupancy—Cost related): Control towers, **generating plants, monuments;** dust collectors, ~~smoke stacks, towers;~~ mausoleums, ~~memorials;~~ and similar ~~uses;~~ grain elevators, concrete or asphalt plants, ~~bulk product processing plants;~~ and other occupied high volume low area structures. The fee is ~~\$0.0001~~ \$0.0002 times the construction cost.

Category E (~~Minimal Occupancy—Volume related~~): Swimming pools. The fee is ~~\$0.010~~ \$0.020 times the gross cubic feet.

Category F (Flammable Liquid or Gas Facilities): Each initial installation of one (1) or more bulk storage tanks, piping or dispensing equipment for ~~Class Classes I, II, IIIA, and IIIB~~ liquids, liquefied petroleum (LP) gas, or liquefied natural gas (LNG) or replacement of such tanks or piping at the same location. The fee is ~~\$40~~ eighty dollars (\$80) each tank.

Category G (Replicated floor plan buildings, such as apartment buildings, hotels, or motels): If a project consists of one (1) or more buildings with replicated floor plans, the filing fee shall be \$0.040 per square foot for one (1) example of each replicated floor plan, plus sixty-nine dollars (\$69) per building.

Category H (Shell building⁵ and initial tenant build-out): The fee for the shell building is \$0.040 times the gross square feet of floor area. The fee for the initial tenant

build-out is \$0.020 times the gross square feet of floor area that is the subject of the build-out.

Category I (Expedited plan review): Expedited plan review is available for the following occupancies: B, F, M, S, and U. All required drawings, applications, and fees shall be received by plan review not later than 9:00 a.m. on the day that the project is submitted. The project will be released not later than 4:30 p.m. on the next following business day that the division is open. The fee for expedited submittal is five thousand dollars (\$5,000), plus the applicable fee or fees from Categories A through H.

(d) The special processing fees shall be as follows:

<u>Special Processing Fees</u>	<u>Amount</u>
(1) Each additional submission for a partially filed project	\$115 \$250
(2) Surcharge for late filing of plans and specifications in accordance with 675 IAC 12-6-8(c) ²	\$69 \$300
(3) Foundation release	\$115 \$80
(4) Addenda and revisions, each system modified per submission (other than compliance corrections) ³	\$35
(5) Master plans, each series or structure	\$173
(6) Incomplete project filing (mailed submissions only) ⁴	\$12
(7) Returned checks	\$35
(8) Reinstatement or time extension of design release	\$23 \$50

Notes:

¹The regular filing and processing fees are paid with the initial submission of the ACDR.

²The surcharge fee, if not collected at the time the ACDR is filed, ~~must~~ **shall** be paid ~~prior to before~~ issuance of any design release.

³Systems are architectural, structural, electrical, plumbing, mechanical (HVAC), ~~and fire protection: alarm, and fire suppression.~~

⁴Payable when missing documents are subsequently filed.

⁵**“Shell building” means a Class 1 structure in which construction that must be filed is required to be performed before occupancy by one (1) or more initial tenants is permitted.**

(e) The explanation of terms shall be as follows:

(1) Square footage (floor area) shall be determined by the outside dimensions of the building or structure. This shall include usable area under the horizontal projection of the roof or floor above such as **the following:**

- (A) Porches.
- (B) Canopies. ~~and~~
- (C) Balconies.

(2) Cubic footage (volume) shall be the gross volume of the building or structure as determined by the outside dimensions

of the building or structure.

(3) Costs (construction) shall be the cost of the labor and materials required to perform the stated scope of construction. It need not include the cost of the **following:**

- (A) Land.
- (B) Interior furnishings. ~~or~~
- (C) Processing equipment.

(f) The state **fire marshal or the building commissioner law compliance officer** may authorize the refunding of any fee specified in this section ~~which that~~ was paid or collected in error. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-2; filed Jan 29, 1986, 3:00 p.m.: 9 IR 1363, eff Mar 1, 1986; filed Feb 17, 1987, 3:15 p.m.: 10 IR 1386, eff Mar 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #86-152 was filed Feb 17, 1987.]; filed Jul 17, 1987, 2:45 p.m.: 10 IR 2700, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-54 was filed Jul 17, 1987.]; filed Jun 3, 1988, 2:15 p.m.: 11 IR 3555, eff Aug 1, 1988; filed Sep 27, 1989, 4:30 p.m.: 13 IR 294; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2285; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; filed Apr 16, 2002, 9:05 a.m.: 25 IR 2731*)

SECTION 7. 675 IAC 12-3-6 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-3-6 Construction inspection fees

Authority: IC 22-12-6-6; IC 22-13-2-13

Affected: IC 22-15-2-6

Sec. 6. (a) This section applies to any Class 1 building or structure:

- (1) for which a design release is required under 675 IAC 12-6; and
- (2) **that** is located within the jurisdiction of a political subdivision that has not established a program to periodically inspect, or cause to be inspected, construction as determined under 675 IAC 12-10-9.

(b) The fees collected under section 2 of this rule for a design release shall be increased by ~~one (1)~~ **the greater** of the following amounts: ~~whichever is greater:~~

- (1) ~~Eighty two hundred dollars (\$80):~~ **(\$200).**
- (2) ~~One-half (1/2) of the categorical processing fee;~~ **\$0.10 per square foot**, but not more than seven ~~thousand five hundred fifty dollars (\$750):~~ **(\$7,500).**

(*Fire Prevention and Building Safety Commission; 675 IAC 12-3-6; filed Feb 1, 1988, 2:18 p.m.: 11 IR 1795, eff Apr 1, 1988; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2287; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2081; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; filed Apr 16, 2002, 9:05 a.m.: 25 IR 2733*)

SECTION 8. 675 IAC 12-3-8 IS AMENDED TO READ AS FOLLOWS:

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675 IAC 12-3-8 Amusement and entertainment permit and inspection fees

Authority: IC 22-12-6-7

Affected: IC 22-12-6; IC 22-14-3-4

Sec. 8. (a) An application for issuance of a permit for a regulated place of amusement or entertainment shall be accompanied by payment to the fire and building services fund in an amount as follows:

(1) Category A: Places where the occupant load is based entirely on fixed seating capacity, and all planned amusement or entertainment activity utilizes a single floor plan described in 675 IAC 12-9-3(a)(2). Examples are theaters and auditoriums.

Occupant Load	Fee
1-99	\$69 \$99
100-499	\$104 \$134
500-999	\$138 \$168
1,000-4,999	\$173 \$203
5,000-9,999	\$207 \$237
10,000 or more	\$242 \$272

(2) Category B: Places where the maximum occupant load is calculated under the method prescribed in the Indiana Building Code, 675 IAC 13. The occupant load may include persons seated in moveable seats or bleachers, fixed seating, persons standing, and combinations thereof. Examples include the following:

(A) Indoor stadiums.

(B) Arenas.

(C) Gymnasiums.

(D) Halls.

(E) Nightclubs. ~~and~~

(F) Other assembly type buildings or portions thereof.

The application fee is calculated from the same schedule as Category A plus an additional ~~sixty-nine~~ **ninety-nine** dollars (~~\$69~~) (**\$99**) for each seating configuration or arrangement described in the floor or site plans submitted with the application under 675 IAC 12-9-3(a).

(b) An application for issuance of a special event endorsement under IC 22-14-3-4 shall be accompanied by payment to the fire and building services fund in an amount of ~~sixty-nine~~ **ninety-nine** dollars (~~\$69~~) (**\$99**) for inspection of the place of amusement or entertainment. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-8; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2235; filed Apr 22, 1996, 3:00 p.m.: 19 IR 2287; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; filed Apr 16, 2002, 9:05 a.m.: 25 IR 2733*)

SECTION 9. 675 IAC 12-3-11 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-3-11 Inspection fee for existing buildings

Authority: IC 22-12-6-6

Affected: IC 22-12-6-1; IC 22-13-4-5

Sec. 11. If a design release for rehabilitation work to **or conversion of** an existing building, issued under 675 IAC 12-8-3(a) **or 675 IAC 12-13-2(a)**, requires passing an on-site inspection conducted by the ~~department~~, **division**, an inspection fee in the amount of ~~seventy-five~~ **one hundred fifty** dollars (~~\$75~~) (**\$150**) shall be paid by the applicant for the design release. The fee shall be paid to the fire and building services fund. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-11; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2236; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 10. 675 IAC 12-3-13 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-3-13 Boiler and pressure vessel inspection, permitting, and licensing fees

Authority: IC 22-12-6-6; IC 22-13-2-13

Affected: IC 22-12-7-5; IC 22-15-6

Sec. 13. (a) The ~~office of the state building commissioner~~ **division** may not charge an owner or user more than two (2) of the fees described in subsections (b) through (e) for inspections of regulated boilers and pressure vessels during a particular calendar year. However, a fee of twenty-five dollars (\$25) shall be paid by an owner or user who has failed to **do either of the following**:

(1) Prepare a boiler or pressure vessel for the required inspection on the date specified by the inspector. ~~or~~

(2) Make repairs or otherwise correct conditions of noncompliance applicable to regulated equipment within the time frame specified in a correction order ~~pursuant to~~ **under** IC 22-12-7-5.

Verification of the conditions noted in either subdivision (1) or (2) shall be documented on the inspection report form mandated by the ~~division of boiler and pressure vessel safety (division)~~ **section (BPVSS)** to report inspection activities relating to equipment regulated by ~~the division:~~ **BPVSS.**

(b) The fees for the internal inspection of regulated boilers shall be as follows:

Heating Surface Area (in square feet)	Amount
0-100	\$24
101-500	\$36
501-1,000	\$48
1,001-10,000	\$90

Fees for internal inspection of regulated boilers exceeding ten thousand (10,000) square feet of heating surface shall be charged at the rates specified in subsection (i).

(c) The fees for the external inspection of regulated boilers shall be as follows:

Heating Surface Area (in square feet)	Amount
0-50	\$18
51-150	\$24
151 or more	\$40

(d) The fees for the internal or external inspection of regulated pressure vessels shall be based on the sectional area of the vessel (overall length head to head times the width or outside diameter) expressed in square feet as follows:

Area (in square feet)	Amount
0-50	\$15
51-150	\$30
Greater than 150	\$60

(e) The fee for internal or external inspection of a service water heater shall be ten dollars (\$10).

(f) The operating permit processing fee for all certificates of inspection (operating permits) issued by the ~~office~~ **division** shall be twenty-five dollars (\$25). In all cases, this fee is in addition to fees for inspection activities.

(g) A request to recreate an operating permit that has been lost shall be accompanied by a payment of fifteen dollars (\$15).

(h) An application for a variance from a rule adopted by the boiler and pressure vessel rules board shall be accompanied by a fee of two hundred dollars (\$200). An additional five hundred dollars (\$500) shall accompany the application when engineering calculations are included for review.

(i) The fees for inspection ~~and/or~~ **or** audit, **or both**, activities requested that are not otherwise listed in this section shall be either of the following:

- (1) Three hundred dollars (\$300) per day, not to exceed four (4) regular working hours.
- (2) Six hundred dollars (\$600) per day exceeding four (4) regular working hours, plus seventy-five dollars (\$75) per hour exceeding eight (8) regular working hours in a particular day, plus actual expenses incurred, such as:
 - (A) travel;
 - (B) lodging; and
 - (C) dining;
 expenses.

A fee computed under this subsection must cover the period from the time the inspector leaves the inspector's regular work schedule to the time the inspector returns to the inspector's regular work schedule and is payable upon receipt of an invoice.

(j) A payment of twenty dollars (\$20) per object inspected shall accompany the annual report of inspection of owner or user inspection agencies.

(k) An application for an owner or user inspection agency certificate shall be accompanied by payment of five hundred dollars (\$500).

(l) An application to sit for an inspector examination shall be accompanied by payment of one hundred dollars (\$100).

(m) The annual renewal of an inspector license shall be accompanied by payment of twenty-five dollars (\$25).

(n) All payments to the office are payable to the fire and building services fund. The state **fire marshal or the building commissioner law compliance officer** may authorize the refunding of any fee specified in this section that was paid or collected in error. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-13; filed Dec 9, 2002, 11:15 a.m.: 26 IR 1556, eff Apr 1, 2003*)

SECTION 11. 675 IAC 12-3-14 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-3-14 Regulated lifting device permitting and certification fees

Authority: IC 22-12-6-6; IC 22-13-2-13

Affected: IC 22-15-5

Sec. 14. (a) An application for an installation or alteration permit for a regulated lifting device shall be accompanied by payment as follows:

Type of Device	Amount
(1) Vertical wheelchair lift, incline wheelchair lift, and incline chair lift	\$250
(2) Any other regulated lifting device, including elevator, escalator, belt manlift, personnel hoist, sewage lift station personnel hoist, or dumbwaiter	\$500

(b) An application for an initial or renewal operating certificate for a regulated lifting device shall be accompanied by payment of one hundred twenty dollars (\$120).

(c) An application for a temporary operating permit for a regulated lifting device shall be accompanied by a payment of one hundred dollars (\$100).

(d) Subsequent inspections to complete an initial inspection of a new or altered regulated lifting device installation shall be at a cost of one thousand dollars (\$1,000) per inspection where the inspection results from erroneous information to the division from the operator or owner that the installation is ready for inspection.

(e) Follow-up inspections on a new installation of a regulated lifting device, where the initial inspection revealed noncompliance with the rules of the commission, shall be at a cost of seven hundred fifty dollars (\$750) for each such inspection.

~~(f)~~ **(f)** All payments to the office are payable to the fire and building services fund. The state **fire marshal or the building commissioner law compliance officer** may authorize the refunding of any fee specified in this section which was paid or collected in error. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-14; filed Dec 9, 2002, 11:15 a.m.: 26 IR 1557, eff Apr 1, 2003*)

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SECTION 12. 675 IAC 12-3-15 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-3-15 Regulated lifting device professional licensing fees

Authority: IC 22-12-6-6; IC 22-13-2-13

Affected: IC 22-15-5

Sec. 15. (a) An application for an initial or renewal license as an elevator contractor, elevator inspector, or elevator mechanic shall be accompanied by payment as follows:

Type of License	Amount
(1) Elevator contractor	\$500
(2) Elevator inspector	\$100
(3) Elevator mechanic	\$100
(4) Temporary elevator mechanic	\$100
(5) Emergency elevator mechanic	\$25

(b) All payments to the office are payable to the fire and building services fund. The state **fire marshal or the building commissioner law compliance officer** may authorize the refunding of any fee specified in this section which was paid or collected in error. (*Fire Prevention and Building Safety Commission; 675 IAC 12-3-15; filed Dec 9, 2002, 11:15 a.m.: 26 IR 1558*)

SECTION 13. 675 IAC 12-4-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-4-4 Statutory authority

Authority: IC 22-13-2-13

Affected: IC 22-12-6-6; IC 22-13-2; IC 22-13-5; IC 36-8-17-13

Sec. 4. (a) The commission has statutory authority to adopt rules in various provisions in the Indiana Code including ~~IC 12-3-2-3-5~~; IC 22-12-6-6, IC 22-13-2-2, IC 22-13-2-8, IC 22-13-2-13, and IC 36-8-17-13.

(b) The ~~office of the state building commissioner law compliance officer~~ has the statutory authority to issue a written interpretation of a building law ~~following the provisions of in accordance with~~ IC 22-13-5. (*Fire Prevention and Building Safety Commission; 675 IAC 12-4-4; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2682, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; errata, 11 IR 97; filed Nov 20, 2000, 3:25 p.m.: 24 IR 998; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 14. 675 IAC 12-4-5 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-4-5 Rule adoption process

Authority: IC 22-13-2-13

Affected: IC 4-22-2; IC 22-12-6-6; IC 22-13-2-2; IC 22-13-2-8; IC 36-8-17-13

Sec. 5. (a) The commission's rulemaking actions shall comply with the requirements of applicable provisions of the Indiana Code, including specifically IC 4-22-2.

(b) Pursuant to ~~IC 4-22-2-15~~, the executive director of the department serving as the secretary of the commission under ~~IC 22-12-5-4(c)~~ is authorized to take any rulemaking action on the commission's behalf except final adoption of a rule under ~~IC 4-22-2-29~~ and readoption of a rule subject to sections 24 through 36 of ~~IC 4-22-2~~ under ~~IC 4-22-2-40~~. The public hearing on a rule may be conducted by:

- (1) any employee of the department; or
- (2) another agent of the commission whenever authorized by the commission.

(c) The commission at its discretion may establish an advisory committee to aid it in the drafting and preparation of proposed rules. Membership on any such committee shall be at the sole discretion of the commission. ~~or the executive director~~. The advice of any such committee is not binding on the commission, which by law retains its full rulemaking authority. (*Fire Prevention and Building Safety Commission; 675 IAC 12-4-5; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2682, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2082; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 15. 675 IAC 12-4-7 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-4-7 Application of changes in rules of commission to particular construction projects

Authority: IC 22-13-2-13

Affected: IC 22-12-6-6; IC 22-13-2-2; IC 22-13-2-8; IC 36-8-17-13

Sec. 7. (a) Construction projects for which design releases must be obtained under 675 IAC 12-6 shall be done in compliance with the applicable rules of the commission in effect on the date the plans and specifications were filed with the ~~office of the state building commissioner division~~ notwithstanding the repeal or amendment of any rule ~~prior to before~~ the date the construction work is actually done. Accordingly, any enforcement action taken by the ~~office of the state building commissioner or the office of the state fire marshal division~~ concerning such construction shall appropriately cite the rules of the commission in effect at the time of the filing of the plans and specifications.

(b) Notwithstanding subsection (a), ~~said~~ the construction work may be done in accordance with any rule of the commission that takes effect subsequent to the filing of the plans and specifications and ~~prior to before~~ the actual construction work being done, provided that an appropriate addenda and revision design release ~~is are~~ issued under 675 IAC 12-6-18.

(c) Construction that is exempt from the design release requirements of 675 IAC 12-6, but is not exempt from the application of the rules of the commission, shall be done in compliance with the rules of the commission in effect on the date the construction work is actually done. Recognizing that:

- (1) the rules may change during the course of construction on a particular project; and
- (2) uncertainty may exist as to when particular work was actually done;

there shall be a rebuttable presumption that all construction for such an exempt project is done on the date the construction begins. The scope of this subsection includes construction on Class 1 structures exempted from the design release requirements by 675 IAC 12-6-4 and construction on Class 2 structures.

(d) This section does not apply to applications of the rules of the commission not related to new construction. *(Fire Prevention and Building Safety Commission; 675 IAC 12-4-7; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2683, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2083; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 16. 675 IAC 12-4-11 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-4-11 Occupancy of existing buildings

Authority: IC 22-13-2-13

Affected: IC 12-17.2; IC 22-12-6-6; IC 22-13-2-2; IC 22-13-2-8; IC 36-8-17-13

Sec. 11. (a) Any building or structure lawfully in existence at the time of the adoption of any rule of the commission for new construction may have its existing use or occupancy continued without having to be altered to comply with such a rule.

(b) No change in the character or use of any building or structure shall be permitted that shall cause the building or structure to be classified within a different occupancy group or within a different division of the same occupancy group, unless ~~such~~ the building or structure complies with, or is made to comply with ~~the~~:

- (1) ~~the~~ current rules of the commission for new construction for the proposed revised use of the building; ~~or~~
- (2) ~~the~~ provisions of:
 - (A) 675 IAC 12-8; or
 - ~~(3) the provisions of (B)~~ (B) 675 IAC 12-13.

Exception: Buildings constructed ~~prior to before~~ the effective date of the 1998 Indiana Building Code ~~(675 IAC 13-2.3)~~ (675 IAC 13-2.3) that change occupancy classification shall not be considered as a change in occupancy as outlined as follows:

Previous Classification	1998 IBC Classifications
B-1	S-3

B-2	B, F-1, M, S-1, and S-2
B-3	S-4 and S-5
B-4	F-2 and S-2
Open Parking Garage	S-4
M	U

(c) Occupancies or rooms, in which the use is changed to include the consumption of alcoholic beverages, and unseparated accessory uses to those occupancies or rooms, where the total area of such unseparated rooms and accessory uses exceeds five thousand (5,000) square feet, shall be made to comply with the sprinkler requirements of 675 IAC 13. For the use to be considered as separated, the separation shall not be less than as required for a one (1) hour occupancy separation in accordance with 675 IAC 13.

(d) ~~The office of the state building commissioner division~~ may conduct an inspection to determine that:

- (1) a building or structure may be exempted from the rules for new construction under 675 IAC 12-8 or 675 IAC 12-13; or
- (2) a proposed change in character or use of any Class 1 building or structure will not cause noncompliance with subsection (b).

(e) Subsection (b) shall not prohibit the following accessory uses within Class 2 structures provided they are in one (1) room that does not exceed five hundred (500) square feet in floor area:

- (1) Wholesale and retail sales.
- (2) Offices.
- (3) Craft or hobby workshops.
- (4) Storage and sales rooms for other than hazardous materials.
- (5) Instructional ~~classroom~~ classrooms for ~~less fewer~~ than twenty (20) adults or children when used not more than twelve (12) hours per week or four (4) hours in any one (1) day.

(f) Subsection (b) shall not prohibit the following accessory uses within Class 2 structures:

- (1) Class I child care homes. ~~and~~
- (2) Class II child care homes licensed in accordance with IC 12-17.2.

(g) Subsection (b) shall not prohibit the use of a Class 1 structure for residential occupancy not to exceed thirty (30) days in a calendar year, if all of the following conditions are met:

- (1) The portion of the Class 1 structure being used for the residential occupancy is classified as A, B, E, or M occupancy.
- (2) All existing exit signs shall be fully operational at all times.
- (3) All means of egress shall be completely clear and unobstructed. All rooms used for sleeping shall exit to a corridor

or exterior exit door.

(4) All emergency lighting shall be fully operational at all times. If emergency lighting is not installed in the building, it shall be installed in accordance with the current Indiana building code.

(5) All fire alarm systems, including manual pull stations, smoke detectors, horns, and strobes shall:

(A) be fully operational; and ~~shall~~

(B) have been tested in accordance with the rules of the commission within the preceding twelve (12) months.

Test documentation shall be maintained on the premises for inspection by the fire official.

(6) For buildings without an automatic alarm system, battery-operated smoke alarms shall be located in each room or space in which people will be sleeping. These alarms shall be:

(A) tested at least monthly; and ~~shall be~~

(B) kept fully operational at all times.

Test documentation shall be maintained on the premises for inspection by the fire official.

(7) No extension cords shall be used. Power strips with circuit breakers are permitted.

(8) Smoking within the building or buildings shall be prohibited at all times. "No Smoking" signs shall be posted in all areas used for residential purposes.

(9) Emergency evacuation plans shall be established in writing, including **the following**:

(A) Procedures to be followed in case of emergencies. ~~location~~

(B) **The locations** of exits. ~~and~~

(C) Gathering ~~place~~ **places** outside for assembly after evacuation in the event of a fire or other emergency.

All individuals using the building shall be trained in the emergency evacuation procedures.

(10) There shall be telephone access at all times for notification of emergencies.

(11) The officer on duty at the nearest responding fire station shall be notified that the building is being used for a residential occupancy, and a calendar shall be provided to the fire station:

(A) showing the dates that people will be using the building for a residential occupancy; and

(B) listing a contact phone number for a representative of the organization that uses the structure for residential purposes.

(12) All of the members, volunteers, and employees of the following who are present when the building is used for residential occupancy shall be trained in emergency procedures and shall be equipped with flashlights:

(A) The entity that operates the facility for nonresidential purposes. ~~and~~

(B) The organization that uses the structure for residential purposes.

(13) At least one (1) adult member, volunteer, or employee of **the**:

(A) ~~the~~ entity that operates the facility for nonresidential

purposes; or

(B) ~~the~~ organization that uses the structure for residential purposes;

shall be awake and on duty at all times that people are sleeping in the building.

(14) There shall be at least one (1) adult member, volunteer, or employee of **the**:

(A) ~~the~~ entity that operates the facility for nonresidential purposes; or

(B) ~~the~~ organization that uses the structure for residential purposes;

on site for each fifteen (15) people who will be sleeping in the building.

(Fire Prevention and Building Safety Commission; 675 IAC 12-4-11; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2684, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jul 23, 1992, 1:00 p.m.: 15 IR 2585, eff Jun 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #92-11 was filed Jul 23, 1992.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2084; errata filed Apr 15, 1998, 10:30 a.m.: 21 IR 3367; filed Nov 20, 2000, 3:25 p.m.: 24 IR 998; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530; filed Jun 25, 2004, 11:00 a.m.: 27 IR 3505)

SECTION 17. 675 IAC 12-5-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-5-2 Definitions

Authority: IC 22-13-2-13

Affected: IC 22-12-7-3; IC 22-13-2-11; IC 25-4; IC 25-31

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Applicant" or "applicant for a variance" means the person who would be in violation of a rule of the commission if he or she:

(1) maintained the conditions sought to be legalized by a variance; and

(2) did not obtain the variance.

This person is usually the owner of the premises in question.

(c) "Architecturally significant" means the same as historically significant.

(d) **"Completed application" means an application for variance that contains all of the information and documentation required under section 5 of this rule.**

(~~Ⓔ~~) (e) "Design professional" means a registered architect or professional engineer who is registered under IC 25-4 or IC 25-31.

(~~Ⓕ~~) (f) "Historically significant" means any structure ~~which~~ **that** is important to the:

(1) general;
 (2) archaeological;
 (3) agricultural;
 (4) economic;
 (5) social;
 (6) political;
 (7) architectural;
 (8) industrial; or
 (9) cultural;
 history of the United States or of Indiana.

~~(f)(g)~~ “Staff” or “commission’s staff” means personnel of the department of technical services and research of the department and any other employees of the division working in conjunction with the division’s personnel who serve as staff for the commission.

~~(g)~~(h) “Undue hardship” means unusual difficulty in meeting the requirements of the rules of the commission because of **any of the following**:

- (1) Physical limitations of a construction site or its utility services.
- (2) Major operational problems in the use of a building or structure. ~~or~~
- (3) **Unreasonably** excessive costs of additional or altered construction elements.

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-2; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2685, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2085; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 18. 675 IAC 12-5-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-5-4 Application process

Authority: IC 22-13-2-13
Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 4. (a) A variance from the rules of the commission may be applied for at any time.

(b) An applicant for a variance shall **do the following**:

- (1) Submit an application to the ~~secretary~~ **commission** on a:
 - (A) form provided by the ~~secretary~~ **commission staff**; or
 - (B) reasonable facsimile;
 the information required by section 5 of this rule.
- (2) Pay the fee required under 675 IAC 12-3-4 by a check or money order payable to the ~~State fire and building Commission~~ **services fund**.

(c) An application may be submitted:

- (1) by the applicant; or
- (2) on the applicant’s behalf by a representative.

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-4; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2686, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2086; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1000; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 19. 675 IAC 12-5-5 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-5-5 Application

Authority: IC 22-13-2-13
Affected: IC 22-12-7-3; IC 22-13-2-11

Sec. 5. ~~An~~ **A completed** application for a variance shall include the following information either on the application form or, if appropriate, as an attachment:

(1) The name and address of **the following**:

- (A) The applicant. ~~and the name and address of~~
- (B) The person submitting the application if it is not submitted by the applicant.

(2) The address and county of the premises for which the variance is being sought.

(3) If the variance involves a project for which plans and specifications have been filed for a design release under 675 IAC 12-6, the ~~state building commissioner’s~~ **division’s** project number.

(4) Identification (by specific citation) of the rule of the commission from which the applicant requests a variance.

(5) Specific description of the rooms, equipment, etc., involved.

(6) A specific description of **either of the following**:

- (A) The undue hardship that compliance with this rule will impose on the applicant. ~~or~~
- (B) How compliance with the rule will prevent the preservation of an architecturally significant part of a building or other structure and the information required by section 7 of this rule.

(7) A statement:

- (A) that noncompliance with the rule will not be adverse to the public health, safety, or welfare and a specific explanation as to why that is so; or
- (B) alternative actions that the applicant would be willing to undertake ~~in lieu~~ **instead** of compliance with the rule to ensure that the granting of the variance will not be adverse to the public health, safety, or welfare and a specific explanation as to why it or they would be adequate.

(8) ~~Three (3) sets~~ **One (1) set** of plans or drawings (~~eleven (11) inches × seventeen (17) inches or smaller~~) and supporting data that describe the area affected by the requested variance and any alternatives proposed by the applicant.

(9) Any information that the applicant believes may be helpful to the commission and its staff in evaluating a variance request, such as photographs.

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(10) If the requested variance concerns a fire safety rule; Written documentation that the:

(A) local fire department; is aware of the nature of the variance; and

(H) If the requested variance involves a project for which plans and specifications have been, or must be, filed for a design release under 675 IAC 12-6 or if it involves a one (1) or two (2) family dwelling; written documentation that the (B) local building official; is

are aware of the nature of the variance.

(11) Written documentation that the local fire department or local building official is aware of the variance shall consist of one (1) or more of the following:

(A) A letter, on the fire department or local building official's letterhead, from the local fire department or local building official stating that a copy of the variance application has been received.

(B) A copy of any of the following:

(i) A certified mail return receipt, together with a copy of the document sent, signed by a representative of the local fire department or local building department.

(ii) Either of the following stating that a copy of the variance application has been received:

(AA) An electronic mail communication from a representative of the local fire department or local building official.

(BB) A facsimile communication, on the fire department or local building official's letterhead, from the local fire department or local building official.

(12) If the requested variance involves a project for which plans and specifications have been, or must be, filed for a design release under 675 IAC 12-6, a signed statement by the design professional (if there is one) that the information contained in the application is accurate.

(13) If the application is submitted on the applicant's behalf, a signed statement **under penalty of perjury** by the applicant of the following:

(A) That he or she is aware of the variance request. and

(B) That it is made on his or her behalf.

(14) A signed statement **under penalty of perjury** by the:

(A) person submitting the application; or the

(B) applicant;

that the information contained in the application is accurate.

(Fire Prevention and Building Safety Commission; 675 IAC 12-5-5; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2686, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; errata, 11 IR 97; filed Aug 10, 1994, 10:40 a.m.: 17 IR 2859; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2086; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1000; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 20. 675 IAC 12-5-6 IS AMENDED TO READ

AS FOLLOWS:

675 IAC 12-5-6 Consideration of applications

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-4; IC 4-21.5-3-7; IC 22-12-7-3; IC 22-13-2-11

Sec. 6. (a) A **completed** variance application may be reviewed by the commission's staff ~~prior to~~ **before** its consideration by the commission. Accordingly, and to allow for mailing of the application to commission members for their review, no variance request shall be placed on the commission's agenda for any meeting of the commission scheduled for a date less than twenty-eight (28) calendar days subsequent to the receipt of the variance request, except where the applicant would be prejudiced by having to wait for a later meeting because of excessive loss of time or unreasonable cost. Otherwise, a **completed** variance ~~request~~ **application** shall be placed on the agenda for the first meeting scheduled later than twenty-eight (28) calendar days subsequent to the receipt of the **completed** variance ~~request~~ **application**.

(b) The commission's staff may hold informal meetings with the applicant ~~and/or~~ **or** representatives, **or both**, in the course of its review of a variance application.

(c) At its discretion, the commission's staff may make a recommendation to the commission concerning a variance request.

(d) The applicant may submit additional information or materials ~~prior to~~ **before** the **mailing date on which meeting information is mailed by staff to members of the commission before** the commission's meeting at which the variance will be considered in order to ~~come into compliance with sections 4 and 5 of this rule or for other appropriate reasons~~ **clarify either of the following:**

(1) **The nature of the hardship or difficulty of compliance.**

(2) **The equal alternative or alternatives being offered.**

(e) At the commission's meeting at which the variance is on the agenda, participation by the applicant or representative is at the discretion of the commission.

(f) If any additional factors, not considered by the commission's staff in its review of the variance application, ~~come up in~~ **arise during consideration of the variance application at** the meeting, the commission may table the variance until its next meeting to allow for further review.

(g) If the commission grants the variance, it may, if appropriate, impose requirements other than those suggested by the applicant.

(h) Any application for variance, pending or tabled for lack of information requested by the staff or the commission, after three (3) consecutive months, may be placed on the commis-

sion's agenda for determination. The commission shall base its determination on the written information provided by the applicant.

(i) The commission shall not grant a variance to any application that has been applied for, for which there is no violation of the commission's rules.

(j) An order granting or not granting a variance shall be issued following the requirements of IC 4-21.5-3-4. If a petition for review is subsequently granted under IC 4-21.5-3-7, that order shall be deemed merely to have been a preliminary determination. (*Fire Prevention and Building Safety Commission; 675 IAC 12-5-6; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2687, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2087; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1001; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 21. 675 IAC 12-5-9 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-5-9 Sanctions imposed on previously issued variances

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 4-21.5-4; IC 22-12-7-6; IC 22-12-7-7; IC 22-13-2-11

Sec. 9. (a) The commission may impose a sanction concerning a variance it has previously issued under IC 22-12-7-7. Available sanctions are **as follows**:

- (1) Revocation.
- (2) Suspension.
- (3) Censure.
- (4) Reprimand. ~~and~~
- (5) Probation.

(b) The: ~~state building commissioner, state fire marshal,~~

- (1) **division;**
- (2) local fire department;
- (3) local building ~~officials,~~ **official;** and
- (4) individuals affected by the variance;

may submit information to the commission concerning the desirability of the imposition of such a sanction. At the commission's meeting at which the sanction is on the agenda, participation by the interested party or representative of the interested party is at the discretion of the commission.

(c) The commission may impose an appropriate sanction whenever one (1) or more of the following ~~exist:~~ **exists**:

- (1) ~~It determines that~~ The variance was obtained by the applicant by fraudulent or misleading statements or information.
- (2) Notification of the required local officials required by ~~675 IAC 12-5-5(10) and 675 IAC 12-5-5(11)~~ **section 5(10) of**

this rule was not given.

(3) ~~That~~ There has not been compliance with an alternative requirement contained in the variance.

(4) ~~That~~ Circumstances have materially changed since a variance was granted so that, if the sanction is not imposed, public health, safety, or welfare will be adversely affected.

(d) The order imposing a sanction shall be issued under the requirements of IC 4-21.5-3-6. If a petition for review is subsequently granted under IC 4-21.5-3-7, that order shall be deemed to have been merely a preliminary determination.

(e) Sanctions under this section may be imposed under IC 22-12-7-6 and IC 4-21.5-4 where appropriate. (*Fire Prevention and Building Safety Commission; 675 IAC 12-5-9; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2687, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; errata, 11 IR 97; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2088; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1001; errata filed Jan 31, 2001, 9:22 a.m.: 24 IR 1670; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 22. 675 IAC 12-6-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-2 Definitions

Authority: IC 22-13-2-13

Affected: IC 22-12-1-5; IC 22-12-1-17; IC 22-15-3; IC 25-4; IC 25-31; IC 32-25-2-9

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Class 1 structure" means the following:

(1) Any part of the following:

(A) A building or structure that is intended to be or is occupied or otherwise used in any part by any of the following:

- (i) The public.
- (ii) Three (3) or more tenants.
- (iii) One (1) or more persons who act as the employees of another.

(B) A site improvement affecting access by persons with physical disabilities to a building or structure described in this subdivision.

(C) Storage facilities, tanks, and dispensing equipment for flammable and combustible liquids or gases.

(2) Subdivision (1) includes a structure that contains three (3) or more condominium units (as defined in ~~IC 32-1-6-2~~) **IC 32-25-2-9**) or other units that **are as follows**:

(A) ~~are~~ Intended to be or are used or leased by the owner of the units. ~~and~~

(B) ~~are~~ Not completely separated from each other by an unimproved space.

(3) Subdivision (1) does not include **the following**:

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(A) A building or structure that **is as follows:**

~~(A) is (i)~~ Intended to be or is used only for an agricultural purpose on the land where it is located. ~~and~~

~~(B) is (ii)~~ Not used for retail trade or is a stand used for retail sales of farm produce for eight (8) or fewer consecutive months in a calendar year.

~~(4) Subdivision (1) does not include (B)~~ A Class 2 structure as defined by IC 22-12-1-5.

~~(5) Subdivision (1) does not include (C)~~ A vehicular bridge.

(D) A structure that is intended to be or is occupied solely to provide periodic maintenance or repair of either of the following:

(i) The structure.

(ii) Mechanical or electrical equipment located within and affixed to the structure.

(c) "Construction" means any of the following:

(1) Erection or assembly of any part of a Class 1 structure at the site where it will be used.

(2) Installation of any part of the: ~~permanent heating, ventilating, air conditioning~~

(A) mechanical;

(B) electrical;

(C) plumbing; sanitary; emergency detection; emergency communication;

(D) architectural;

(E) structural; or

(F) fire or explosion alarm or suppression;

systems for a Class 1 structure at the site where it will be used. **Replacement during maintenance and repair, without alteration, does not constitute construction.**

(3) Work undertaken to **do the following:**

(A) Alter, remodel, rehabilitate, or add to any part of a Class 1 structure.

~~(4) Work undertaken to (B)~~ Relocate any part of a Class 1 structure, except a mobile structure.

(d) "Design professional" means a registered architect or professional engineer who is registered under IC 25-4 or IC 25-31.

(e) "Structural safety" means the continued capability of **either of the following:**

(1) Load-bearing members of a building or structure to transmit actual and design live and dead loads to a foundation. ~~or~~

(2) Other load-bearing members within the allowable working stresses of the materials or assembly of materials involved.

(f) "Temporary structure" means **any of the following:**

(1) A Class 1 structure that is erected or installed for a period of not more than ninety (90) days after which it will be demolished or relocated.

(2) Portable structures on construction job sites for use by

persons involved in the construction process. ~~or~~

(3) Mobile structures as set forth at IC 22-12-1-17.

(Fire Prevention and Building Safety Commission; 675 IAC 12-6-2; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2688, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; errata, 11 IR 97; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2089; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 23. 675 IAC 12-6-3 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-3 Design release; requirement

Authority: IC 22-13-2-13

Affected: IC 22-15-3

Sec. 3. (a) No construction shall be done on a Class 1 structure until a design release has been issued by the ~~office of the state building commissioner division~~ unless the construction is of a type specifically exempted from the design release requirements by section 4 of this rule. ~~(675 IAC 12-6-4)~~. Design releases may be issued by the ~~office of the state building commissioner only with the approval of the state fire marshal division~~.

(b) If a foundation release is obtained under section 14 of this rule, ~~(675 IAC 12-6-14)~~, construction may:

(1) be done to the grade level only as provided for by section 14(c) of this rule; ~~(675 IAC 12-6-14(c))~~ and ~~may~~

(2) not go beyond that point without the issuance of a design release or a partial design release authorizing the further construction.

(c) If a partial design release is obtained under section 15 of this rule, ~~(675 IAC 12-6-15)~~, construction may be done to the extent of the partial design release but it may not exceed that scope without the issuance of a design release or another partial design release authorizing the further construction. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-3; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2689, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 24. 675 IAC 12-6-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-4 Exemptions from design release requirement

Authority: IC 22-13-2-13

Affected: IC 4-21.5; IC 12-13-4-3; IC 22-15-3

Sec. 4. (a) Design releases are necessary for construction on all Class 1 structures, except the following:

(1) Class 1 structures that will never be occupied or otherwise

used in any part by the public and ~~which that~~ will not normally be occupied or otherwise used in any part by a person who is acting as an employee of another, of the following types:

- (A) Oil derricks.
- (B) Pipelines, including related physical support structures.
- (C) Tanks for storage of products, other than flammable or combustible liquids or gases, ~~which that~~ are factory fabricated and assembled.
- (D) Electrical power cable transmission towers and substations.
- (E) Structures used for communication purposes, except for:

- (i) satellite dishes exceeding ten (10) feet in diameter; and
 - (ii) antennas exceeding thirty (30) feet in length; when mounted on the roof of a Class 1 structure.

(F) Structures appurtenant to:

- (i) industrial plants;
 - (ii) power generating plants;
 - (iii) gas plants;
 - (iv) bulk storage facilities; and
 - (v) shipping terminals;

where the functions of ~~such the~~ structures are primarily the support of related equipment.

(G) Structures of:

- (i) sewage;
 - (ii) water;
 - (iii) gas; and
 - (iv) electric;

utilities.

(H) Signs, except those mounted on the roof of a Class 1 structure, ~~which that~~ exceed one hundred (100) square feet of surface area.

(2) Temporary structures.

(3) Class 1 structures either:

- (A) owned by the federal government; or
 - (B) located on land over which exclusive jurisdiction has been ceded to the federal government. (See 40 U.S.C. 255 and IC 4-21.5.)

(4) One (1) story detached accessory Class 1 structures in Group B, F, R, S, U, or M Occupancy classifications that:

- (A) do not exceed five hundred (500) square feet; and
 - (B) are used as:
 - (i) equipment shelters;
 - (ii) tool and storage sheds (not used for the storage or handling of hazardous materials);
 - (iii) freezers; ~~or~~
 - (iv) coolers; or
 - (v) other similar uses.

(5) One (1) story attached additions to Class 1 structures in Group B, F, R, S, U, or M Occupancy classifications that:

- (A) do not:
 - (i) exceed three hundred (300) square feet; ~~and~~
 - (B) ~~do not~~ (ii) impose an excessive structural load onto

the existing structure; and

~~(C)~~ (B) are used as:

- (i) equipment shelters;
 - (ii) tool and storage sheds (not used for the storage or handling of hazardous materials);
 - (iii) freezers;
 - (iv) coolers; or
 - (v) other similar uses.

(6) One (1) story detached Class 1 structures that:

- (A) do not exceed five hundred (500) square feet in floor area;
 - (B) have at least one (1) unenclosed side; and
 - (C) are used for personnel shelters, such as:
 - (i) bus stops;
 - (ii) picnic shelters; and
 - (iii) gazebos.

(7) One (1) story detached Class 1 structures that:

- (A) do not exceed two hundred (200) square feet in floor area; and
 - (B) are used as guard houses or retail sales outlets, such as:
 - (i) kiosks;
 - (ii) drive-up facilities; and
 - (iii) roadside fruit and vegetable stands.

(8) Fences, except for those enclosing:

- (A) public swimming pools; or
 - (B) liquified petroleum gas storage facilities.

(9) Retaining or enclosure walls, except for those surrounding flammable or combustible liquids or gases storage facilities.

(10) Installation or replacement of tanks and dispensing equipment for flammable and combustible liquids or gases if the scope of the work is limited to the following:

- (A) Liquid petroleum gas (LPG) storage facilities having a total capacity of not more than four thousand (4,000) gallons and no single tank having a capacity of more than two thousand (2,000) gallons measured as gallons of water.
 - (B) Storage tanks for Class I, II, IIIA, or IIIB liquids:
 - (i) having a capacity of six hundred sixty (660) gallons or less; ~~and~~
 - (ii) that are portable; and
 - (iii) that are for temporary use only.

(11) Structures to be used primarily for the display of agricultural products and not used for assembly purposes where ~~such the~~ structures are located within a political subdivision qualified under 675 IAC 12-10-9.

(12) Structures to be built in accordance with the requirements applicable to their eventual use as Class 2 structures that will initially be used as models or offices for the sale of Class 2 structures where the initial use does not cause any of the building systems to become noncompliant with current rules of the commission for that use.

(b) Design releases are necessary for the remodeling or altering of all Class 1 structures, except work limited to one (1) or more of the following:

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- (1) Any of the buildings or structures the new construction of which is exempted by subsection (a).
- (2) Plumbing work as follows:
- (A) Replacement of piping, valves, or fixtures, provided that ~~such the~~ replacement does not involve relocation of fixtures.
 - (B) Installation of plumbing fixtures, provided that the drainage fixture unit count does not exceed five (5).
 - (C) Replacement of water heaters with a similar type and capacity in the same location.
 - (D) Installation of water heaters with a capacity of one hundred (100) gallons or less.
- (3) Electrical work as follows:
- (A) Replacement in the same location of electrical equipment or devices of a similar type and rating, including an increase in current capacity in nonhazardous areas where there is no change in voltage or phases.
 - (B) Portable or temporary equipment and devices energized by means of cord and plug.
 - (C) Temporary installation of wiring and devices.
 - (D) Installation of branch circuits not exceeding the capacity of the electrical distribution system within the existing building.
 - (E) Low-energy power, control, and signal circuits of Classes II and III as defined in the Indiana Electrical Code except circuits for fire detection or fire alarm systems.
 - (F) Electrical wiring, apparatus, or equipment installed by a public or private utility in the exercise of its function as a serving utility:
 - (i) for the generation, transmission, distribution, or metering of electrical energy; **or**
 - (ii) in the operation of signals or the transmission of intelligence.
 - (G) Except for fire detection or fire alarm systems, electrical wiring, devices, appliances, apparatus, or equipment:
 - (i) operating at less than twenty-five (25) volts; and
 - (ii) not capable of supplying more than fifty (50) watts of energy.
- (4) Mechanical work as follows:
- (A) Installation of any portable heating, ventilating, and air conditioning appliance or equipment.
 - (B) Replacement of mechanical appliances and equipment with a similar type and rating in the same location.
 - (C) Installation of **any of the following**:
 - (i) A heating system having an output not in excess of four hundred thousand (400,000) British thermal units per hour.
 - (ii) A cooling system having an output ~~no not~~ greater than fifteen (15) tons (one hundred eighty thousand (180,000)) British thermal units per hour). ~~or~~
 - (iii) A combination of the two (2) having an air-handling capacity not in excess of nine thousand (9,000) cubic feet per minute.
 - (D) Installation of heating or cooling equipment to be used for commercial processing work or activities where comfort of personnel is not of primary concern.
- (5) Miscellaneous work as follows:
- (A) Painting, papering, and replacement of coverings on:
 - (i) walls;
 - (ii) ceilings;
 - (iii) roofs; or
 - (iv) floors;and similar finish work, including replacement or reglazing of glass.
 - (B) Cases, counters, and partitions not over six (6) feet in height.
 - (C) Penetrations of nonfire-rated exterior walls where the width of the opening:
 - (i) does not exceed six (6) feet; and
 - (ii) is not for a required exit.
 - (D) Installation of one (1) or more nonload-bearing partitions not to exceed a total of one hundred (100) lineal feet in length provided it is not part of a corridor or a partition that is required to be of fire-resistive construction.
- (6) Fire sprinkler systems as follows:
- (A) ~~Fire sprinkler system additions and alterations described in this subdivision shall be permitted providing the scope of work performed does not exceed the limitations listed in either clause (D) or (E) or (F):~~
 - (B) ~~All additions or alterations permitted by this subdivision shall be documented by the installer and kept on file with the maintenance and testing records required by 675 IAC 22.~~
 - (C) ~~Replacement of components of existing wet fire sprinkler systems of light hazard or ordinary hazard classification as defined in 675 IAC 13; including:~~
 - (i) ~~replacement of sprinkler heads;~~
 - (ii) ~~replacement of equipment; or~~
 - (iii) ~~replacement of piping to restore a system to its original condition and configuration.~~
 - (D) ~~Alteration of existing light hazard or ordinary hazard fire sprinkler systems; including:~~
 - (i) ~~relocating up to fifty (50) exposed or concealed sprinkler heads of a wet type system to accommodate new partitions or ceiling locations without increasing the design occupancy hazard or commodity classification;~~
 - (ii) ~~conversion of a dry type system to a wet or antifreeze type system not exceeding ten (10) sprinkler heads; or~~
 - (iii) ~~conversion of a wet or antifreeze type system not exceeding ten (10) sprinkler heads to a dry type system.~~
 - (E) ~~The addition of sprinkler heads to an existing wet type fire sprinkler system of:~~
 - (i) ~~twenty (20) or fewer sprinkler heads added to a light hazard system; or~~
 - (ii) ~~ten (10) or fewer sprinkler heads added to an ordinary hazard system.~~
 - (F) ~~Alterations allowed by clause (D) and additions allowed by clause (E) where the total number of sprinkler heads is fifty (50) or less for wet systems and ten (10) or less for dry~~

systems including preaction systems.

(c) The design release requirements including filing of plans and specifications shall apply for any work otherwise exempted by subsection (b) when a part of, supplemental to, or an accessory of a construction project that otherwise requires a design release.

(d) Construction work on a Class 1 structure exempted from the design release requirements under this section is not exempt from compliance with other rules of the commission. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-4; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2689, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; errata, 11 IR 97; filed Oct 17, 1989, 11:05 a.m.: 13 IR 388; errata filed Aug 11, 1990, 5:00 p.m.: 13 IR 2140; filed Sep 21, 1992, 9:00 a.m.: 16 IR 714; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2090; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1002; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 25. 675 IAC 12-6-6 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-6 Application for construction design release

Authority: IC 22-13-2-13

Affected: IC 22-12-1-3; IC 22-15-3

Sec. 6. (a) The application for construction design release (ACDR) form:

- (1) shall be available from the ~~office of the state building commissioner division~~; and
- (2) may be available from building departments of local units of government.

(b) The ~~application~~ ACDR shall be filed:

- (1) by the owner; or
- (2) on the owner's behalf by the design professional for the project.

(c) The ACDR shall contain the following items:

(1) The:

- (A) name and address of the owner; and ~~the~~
- (B) name, address, and registration number of the design professional for the project, if there is one.

(2) ~~Describe~~ **A description** of the land on which the proposed work is to be done by:

- (A) legal description;
- (B) street address; or
- (C) similar description;

that will readily identify and definitely locate the proposed building or work.

(3) ~~Identify~~ **An identification** and ~~describe~~ **a description** of the work for which the application for a design release is

being made.

(4) ~~Indicate~~ **An indication** of the use or occupancy for which the proposed work is intended.

(5) **State A statement** of the total gross square feet of **all floors of the following**:

- (A) ~~all floors of~~ Any Class 1 structure.
- (B) ~~all floors of~~ Any addition to an existing Class 1 structure. ~~and all floors of~~
- (C) The existing portion of the Class 1 structure. ~~and~~
- (D) ~~all floors of~~ Class 1 structures that are undergoing remodeling or alteration (including both floors that are and are not undergoing remodeling or alteration).

(6) **State A statement** of whether or not the plans and specifications are being submitted under 675 IAC 12-8.

(7) **State A statement** of the estimated costs of all construction work included in the project for which application for design release is being made.

(8) ~~Give such~~ Other reasonable data and information concerning compliance with the rules of the commission that the ~~state building commissioner division~~ may require.

(9) ~~Be signed~~ **A signature** by the owner or an authorized agent ~~who shall certify~~ **certifying** that the project will:

- (A) be constructed in compliance with all applicable rules of the commission; and ~~will~~
- (B) not be changed (unless permitted under section 18 of this rule) from the design specified in the plans and specifications submitted with the application and released by the ~~office of the state building commissioner division~~.

Any person purporting to be an agent of the owner may be required to submit written authorization of ~~such the~~ fact.

(10) If a design professional is required by section 9 of this rule, the application shall include a certificate by the design professional sworn or affirmed under penalty of perjury stating **the following**:

- (A) That the information required by subdivisions (1) through (8) is true and accurate.
- (B) That the plans and specifications submitted for the application:
 - (i) were prepared either by or under the immediate supervision of the person making the statement; ~~and~~
 - (ii) ~~That the plans and specifications submitted for the application~~ provide for construction that will meet all building laws as that term is defined by IC 22-12-1-3, including all building rules of the commission.

~~(C)~~ (C) That the construction covered by the application will be subject to inspection at intervals appropriate to the stage of the construction by a design professional identified in the statement for the purpose of determining in general if work is proceeding in accordance with the released plans and specifications.

(Fire Prevention and Building Safety Commission; 675 IAC 12-6-6; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2691, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document

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#87-53 was filed Jul 17, 1987.]; errata, 11 IR 97; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2092; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 26. 675 IAC 12-6-7 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-7 Plans and specifications

Authority: IC 22-13-2-13

Affected: IC 22-15-3; IC 25-4; IC 25-31

Sec. 7. (a) Plans and specifications filed with an application for a design release shall comply with this section.

(b) All plans and specifications and any supporting data filed shall be **as follows**:

(1) Sufficiently clear and complete to show in detail that the proposed work will comply with the rules of the commission. ~~They shall be~~

(2) In the English language and dimensions ~~shall be~~ in the English units of measurement (yards, feet, or inches).

(c) One (1) complete set of plans and specifications required by this section shall:

(1) be filed for review; and ~~shall~~

(2) not be returned to the applicant.

(d) No additional copies of the plans and specifications filed with the application for design release may be filed; however, additional copies may be made by the applicant and utilized:

(1) on the construction job site as required by section 19 of this rule; and

(2) to meet requirements of local units of government.

(e) If a design professional is required by section 9 of this rule:

(1) the plans and specifications shall be prepared by a design professional who is:

(A) competent to design the construction covered by the application; and ~~is~~

(B) registered under IC 25-4 or IC 25-31;

(2) each page of all drawings (plans) and the title page of all specifications shall include the legible signature and the seal of the:

(A) design professional described in subdivision (1); or ~~the~~

(B) person's technical or professional staff; and

(3) the plans and specifications shall be filed by the:

(A) design professional described in subdivision (1); or ~~the~~

(B) person's technical or professional staff.

(f) If a design professional is not required by section 9 of this rule, but the plans and specifications are nonetheless prepared and filed by a design professional, ~~such~~ the filing shall not be required to comply with **the following**:

(1) Subsection (e). ~~and~~

(2) Section 6(c)(10) of this rule.

~~(g) If a design professional is not required by section 9 of this rule and the plans and specifications are not prepared and filed by a design professional, the owner shall sign and date all documents, on the first page of all drawings (plans) and the title page of all specifications.~~

~~(h)~~ (g) Plans and specifications filed under this section shall include all of the following as applicable:

(1) A site plan drawn to scale, showing dimensioned location of building property lines, and to all adjacent buildings on the property, as well as width of any street or easements bordering the property.

(2) Foundation and basement plans and details.

(3) Detailed dimensioned floor plans drawn to scale for all floors showing such items as **the following**:

(A) Wall configuration. ~~and~~

(B) Fire rating.

(C) Exit ways.

(D) Doors.

(E) Windows.

(F) Location of plumbing fixtures.

(G) Chairlifts.

(H) Elevators. ~~and~~

(I) Room designation.

(4) Fire and life safety plans showing graphically or by legend the location and rating of building elements, such as **the following**:

(A) Area separation walls.

(B) Occupancy separation walls.

(C) Smoke barriers.

(D) Fire-rated corridor walls.

(E) Stair enclosures.

(F) Shaft enclosures. ~~and~~

(G) Horizontal exits.

(5) Wall elevations of all exterior walls.

(6) Sections and details of walls, floors, and roofs showing **the following**:

(A) Dimensions.

(B) Materials. ~~and~~

(C) Heat transfer ratings.

(7) Structural plans and elevations showing size and location of all members, truss designs showing all connection details, and all stress calculations if specifically requested.

(8) Details indicating how required structural and fire-resistive integrity will be maintained where wall, floor, and ceiling penetrations will be made for:

(A) electrical;

(B) mechanical;

(C) plumbing; and

(D) communication;

conduit, pipes, and similar systems.

(9) Room finish schedules showing finishes for walls, ceilings, and floors in all rooms, stairways, and corridors.

(10) Door schedules showing:

- (A) material;
 - (B) size;
 - (C) thickness; and
 - (D) fire resistance rating;
- for all doors, frames, and hardware.
- (11) Construction specifications, which for small projects may be on the plans.
- (12) Electrical plans showing:
- (A) the electrical distribution system;
 - (B) the service equipment;
 - (C) the grounding methods;
 - (D) the emergency and standby power systems; and
 - (E) any power or lighting information;
- required for compliance with the Indiana Energy Conservation Code under 675 IAC 19.
- (13) Plumbing plans showing **the following**:
- (A) Fixture location.
 - (B) Risers.
 - (C) Drains. ~~and~~
 - (D) Piping isometrics.
- (14) Mechanical plans showing location and size of:
- (A) ductwork;
 - (B) equipment;
 - (C) fire dampers; and
 - (D) smoke dampers;
- and equipment schedules showing capacity.
- (15) Energy conservation details to include **the following**:
- (A) Design criteria.
 - (B) Exterior envelope component materials.
 - (C) U values of the envelope system.
 - (D) R values of insulating materials.
 - (E) Size and type of equipment. ~~and~~
 - (F) Systems controls.
- (16) Accessibility details to include **the following**:
- (A) Access to buildings.
 - (B) Ramps and walks with slope.
 - (C) Dimensioned restroom plans and clearances.
 - (D) Grab bars.
 - (E) Door swing and size. ~~and~~
 - (F) Special seating accommodations.
- (17) Plans for automatic fire-extinguishing systems showing **the following**:
- (A) Automatic sprinkler piping size and spacing.
 - (B) Standpipes.
 - (C) Fire pumps.
 - (D) Water supply data.
 - (E) Rating of sprinkler heads. ~~and~~
 - (F) Other specific requirements contained in NFPA Standards 11, 12, 13, 13R, 14, 20, and 2001 as adopted in 675 IAC 13.
- (18) Plans for fire detection and alarm systems showing location and type of **the following**:
- (A) Detection activation devices (automatic or manual).
 - (B) Control panels.

- (C) Annunciator panels and zones.
 - (D) Water flow devices. ~~and~~
 - (E) Other specific requirements contained in NFPA Standard 72 as adopted in 675 IAC 22.
- (19) Plans for public swimming pools showing **the following**:
- (A) Area and volume.
 - (B) Enclosure for pool area.
 - (C) Turnover rate.
 - (D) Filtration and circulation system.
 - (E) Swimmer load.
 - (F) Materials.
 - (G) Shape and depth of pool.
 - (H) Deck design.
 - (I) Ladders.
 - (J) Steps.
 - (K) Drainage system.
 - (L) Water supply system. ~~and~~
 - (M) Electrical system.

(20) Additional information as may be needed to substantiate claims that the proposed construction will comply with the rules of the commission.

(Fire Prevention and Building Safety Commission; 675 IAC 12-6-7; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2691, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Oct 17, 1989, 11:05 a.m.: 13 IR 390; filed Aug 10, 1994, 10:40 a.m.: 17 IR 2860; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2093; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1004; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 27. 675 IAC 12-6-8 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-8 Fees

Authority: IC 22-13-2-13

Affected: IC 22-15-3

Sec. 8. (a) An application for a design release shall be accompanied by payment of the appropriate plan review fee as set forth in 675 IAC 12-3.

(b) Additional special processing fees shall be paid as required by 675 IAC 12-3.

(c) The surcharge for late filing of plans and specifications shall apply when **the construction**:

(1) ~~construction~~ is begun on a Class 1 structure where a design release is required before the design release has been issued by the ~~office of the state building commissioner;~~ **division**; and

(2) ~~the construction~~ job site has been inspected by any representative of the ~~office of the state building commissioner;~~ **division**.

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(Fire Prevention and Building Safety Commission; 675 IAC 12-6-8; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2693, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2094; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 28. 675 IAC 12-6-9 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-9 Design professionals

Authority: IC 22-13-2-13; IC 22-15-3-3

Affected: IC 22-15-3

Sec. 9. (a) Design professionals are required for the construction of Class 1 structures where a design release is required, except any of the following:

- (1) Class 1 structures with thirty thousand (30,000) or fewer cubic feet of space.
- (2) Additions to Class 1 structures if the addition adds thirty thousand (30,000) or fewer cubic feet of space.
- (3) Alteration to a Class 1 structure if the alteration does not involve changes affecting the structural safety of the Class 1 structure.
- (4) Installation or alteration of an automatic fire sprinkler system in a Class 1 structure designed by persons as described in subsection (b).

(b) The design for the installation or alteration of an automatic fire sprinkler system shall be prepared by a qualified person ~~with~~ **who is currently** any of the following: ~~requirements:~~

- (1) ~~Has been~~ Registered as a design professional as defined in section 2(d) of this rule.
- (2) ~~Has been~~ Certified as a Level III or Level IV automatic sprinkler layout technician by the National Institute for Certification in Engineering Technologies.
- (3) ~~Has been~~ Certified by an agency substantially similar to that of subdivision (2) and approved by the ~~fire prevention and building safety~~ commission. ~~Such~~ **The** certification shall include the following:
 - (A) Not less than five (5) years of experience laying out fire sprinkler systems.
 - (B) Having done independent engineering technician work with little or no supervision on jobs covered by standards and complete plans, specifications, or instructions.
 - (C) A demonstration of knowledge regarding the following topics:
 - (i) The relationship between plans, specifications, and contracts.
 - (ii) Preparation of simple designs.
 - (iii) The basic application of NFPA Standards.
 - (iv) Basics of sprinkler systems.
 - (v) Basic materials and components.
 - (vi) Fundamentals of mathematics.
 - (vii) Fundamentals of physical science.

- (viii) Construction plans.
 - (ix) Fire protection plans and symbols.
 - (x) Basics of system layout.
 - (xi) Classification of occupancies.
 - (xii) Water supply requirements.
 - (xiii) System connections.
 - (xiv) System piping configurations, schedules, and sizes.
 - (xv) Requirements of spacing.
 - (xvi) Sprinkler location and position.
 - (xvii) Pipe joining techniques and fittings.
 - (xviii) Pipe hangers and hanging.
 - (xix) Wet and dry systems.
 - (xx) Hydraulic calculations of systems.
 - (xxi) Underground piping.
 - (xxii) Special sprinklers, such as residential, quick response, and extended coverage sprinklers.
 - (xxiii) Water flow tests.
 - (xxiv) Fundamentals of hydraulics.
 - (xxv) Dwelling sprinklers.
 - (xxvi) Advanced hydraulic calculations.
 - (xxvii) Hydraulic design area.
- (D) A demonstration of knowledge regarding the following:
- (i) Any two (2) of the following three (3) topics:
 - (AA) Basic communication skills.
 - (BB) Basic metric units and conversions.
 - (CC) Basic principles of combustion.
 - (ii) Any three (3) of the following seven (7) topics:
 - (AA) Specifications and cost estimates.
 - (BB) Contracts.
 - (CC) Building codes.
 - (DD) Insurance authorities and their requirements.
 - (EE) Common material specifications.
 - (FF) System components and limitations.
 - (GG) Special piping materials.
 - (iii) Any ten (10) of the following thirteen (13) topics:
 - (AA) Exposure protection systems.
 - (BB) Selection of fire pumps.
 - (CC) Pump flow tests.
 - (DD) High piled storage.
 - (EE) Rack storage.
 - (FF) Sprinkler system maintenance.
 - (GG) Standpipe systems.
 - (HH) Fire pumps and systems.
 - (II) Storage tanks.
 - (JJ) Alarms and system supervision.
 - (KK) Fundamentals of fire extinguishment.
 - (LL) Seismic bracing.
 - (MM) Surveys for fire protection.
 - (iv) Any six (6) of the following eleven (11) topics:
 - (AA) Project scheduling and coordination.
 - (BB) Bid invitation package and bid proposal.
 - (CC) Contractual requirements and interpretations.
 - (DD) Shop and erection drawings.
 - (EE) System acceptance tests.
 - (FF) Antifreeze systems.

- (GG) Water cooling towers.
- (HH) Aircraft hangars.
- (II) Internal and external corrosion.
- (JJ) Meters and backflow protection.
- (KK) Land surveying.

(v) Any three (3) of the following ten (10) topics:

- (AA) Multipurpose piping.
- (BB) Water spray systems.
- (CC) Foam systems.
- (DD) Halon systems.
- (EE) Carbon dioxide systems.
- (FF) Alarm and supervisory systems.
- (GG) Dry chemical systems.
- (HH) Foam-water systems.
- (II) Sprinklers and valves.
- (JJ) Large drop sprinkler systems.

A copy of the qualified person's certification or registration pocket card shall be submitted with the application for construction design release.

(c) The requirements for design professionals apply to all types of design releases provided for in this rule. If a construction project originally required a design professional, then a design professional is required for all partial design releases and addenda and revision design releases for that project. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-9; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2693, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jul 2, 1993, 3:30 p.m.: 16 IR 2554; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2094; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1005; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 29. 675 IAC 12-6-10 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-10 Predesign conferences

Authority: IC 22-13-2-13
Affected: IC 22-15-3

Sec. 10. An applicant may request in writing consultation with representatives of the ~~offices of the state building commissioner division~~ and the ~~state fire marshal commission's staff~~ for the purpose of resolving questions on the application of the rules of the commission to a specific project. The results of any ~~such~~ consultations shall:

- (1) not be binding on ~~said offices the division or the commission~~ in the consideration of an application for a design release; and
- (2) in no way ~~shall~~ serve as a substitute for the authority of the commission to grant or deny variances under 675 IAC 12-5.

(Fire Prevention and Building Safety Commission; 675 IAC 12-6-10; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2693, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for

30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1006; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 30. 675 IAC 12-6-11 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-11 Alternative materials, methods, and design

Authority: IC 22-13-2-13
Affected: IC 22-15-3

Sec. 11. (a) This section does not authorize a variance from any rule adopted by the commission.

(b) The rules adopted by the commission do not prevent the use of:

- (1) materials;
- (2) methods of construction; or
- (3) design procedures;

if they are not specifically prohibited in the rules and if they are approved under subsection (c) or (e).

(c) ~~The state fire marshal and the state building commissioner~~ **division** may, in the review of an application for a design release, consider as evidence of compliance with the rules adopted by the commission any evaluation report that:

(1) contains limitations, conditions, or standards for:

- (A) alternative materials;
- (B) method of construction; or
- (C) design procedures; and

(2) is:

- (A) published by an independent, nationally recognized testing laboratory; or
- (B) ~~other another~~ organization listed in subsection (d).

(d) The following laboratories or organizations, with their applicable evaluation reports, are approved:

- (1) Factory Mutual Loss Prevention Data Sheets and test reports (FM).
- (2) International Organization for Standardization (ISO) (ISO standards listed by the American National Standards Institute).
- (3) International Electrotechnical Commission (IEC) (IEC standards listed by the American National Standards Institute).
- (4) Japan Industrial Standards (JIS) (which are found to be equivalent to ANSI standards).
- (5) German Institute for Standards (Deutsches Institut fur Normung) (DIN) (standards which are found to be equivalent to ANSI standards).
- (6) French Standards Association (AFNOR) (standards which are found to be equivalent to ANSI standards).
- (7) Canadian Standards Association (CSA) (which are found to be equivalent to ANSI standards).
- (8) BOCA Evaluation Services, Inc., Building Officials and

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Code Administrators International (BOCA) (research reports).

(9) Council of American Building Officials (CABO) (National Evaluation Services (NES) evaluation reports).

(10) ICBO Evaluation Services Inc. International Conference of Building Officials (ICBO) (ICBO Evaluation Service Inc. evaluation reports).

(11) SBCCI Public Safety Testing and Evaluation Services, Inc., Southern Building Code Congress International (SBCCI) (compliance reports).

(12) International Association of Plumbing and Mechanical Officials (IAPMO) (Directory of Research Recommendations).

(e) The ~~state building commissioner division~~ may, in the review of an application for a design release, accept as evidence of compliance with provisions of the Indiana Building Code under 675 IAC 13, similar provisions of the ADA Accessibility Guidelines for Buildings and Facilities included as Appendix A, Standards for Accessible Design, Part 36 Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (28 CFR 36) as published in 56 FR 144 on July 26, 1991, on pages 35544 through 35691. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-11; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2693, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Oct 17, 1989, 11:05 a.m.: 13 IR 391; filed Sep 21, 1992, 9:00 a.m.: 16 IR 715; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2095; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 31. 675 IAC 12-6-12 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-12 Consideration of applications for design releases

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-4; IC 4-21.5-3-7; IC 22-15-3

Sec. 12. (a) The ~~office of the state building commissioner division~~ shall consider applications for design releases and plans and specifications filed under this rule. ~~in conjunction with the office of the state fire marshal~~. No design release shall be issued unless:

(1) section 5 of this rule has been complied with by the applicant; ~~and~~

(2) the plans and specifications submitted with the application have been reviewed by the ~~office of the state building commissioner for compliance with the rules of the commission; and division.~~

(3) the plans and specifications submitted with the application have been presented to the office of the state fire marshal and approved in writing by the office of the state fire marshal.

(b) Subsequent to the filing of an application, the applicant

may be requested to **do one (1) of the following**:

(1) Submit additional information or documents to place the application in compliance with section 5 of this rule. ~~or to~~

(2) Modify the plans and specifications in order to place them in compliance with the rules of the commission.

If the applicant has not done so within thirty (30) days following the date of request, the design release shall be subject to denial by the ~~state building commissioner~~. **division.**

(c) The order granting or denying the design release shall be issued by the ~~office of the state building commissioner division~~ following the requirements of IC 4-21.5-3-4. If a petition for review is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the commission.

(d) Prior to the issuance of an order by the office of the state building commissioner under subsection (c), a meeting between the executive director of the department, the state building commissioner, and the state fire marshal may be called by the executive director of the department:

(1) upon request of the state building commissioner or the state fire marshal, if the state building commissioner and the state fire marshal cannot agree on the issuance of a design release; ~~or~~

(2) upon request of the applicant for the design release, if the office of the state building commissioner and the office of the state fire marshal have not acted to issue or deny the design release within a reasonable time after the application is submitted to the office.

(e) At a meeting called under subsection (d), the executive director of the department, the state building commissioner, and the state fire marshal shall review the application for a design release and shall, by majority vote, issue a final decision. Said order shall be issued following the requirements of IC 4-21.5-3-4 and shall eliminate the need for an order to be issued under subsection (c). If a petition for review is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the ~~commission~~. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-12; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2694, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2097; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 32. 675 IAC 12-6-14 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-14 Foundation releases

Authority: IC 22-13-2-13

Affected: IC 22-15-3

Sec. 14. (a) A foundation release may be issued by the ~~office of the state building commissioner~~, with the approval of the

~~office of the state fire marshal, division~~ upon the request of an applicant for a design release to allow for construction work to the extent stated in subsection (c) to be undertaken ~~prior to before~~ plan review and consideration of the issuance of a design release if ~~the~~:

- (1) ~~the~~ documents and fees required under section 5 of this rule have been submitted; **and**
- (2) ~~the~~ applicant:
 - (A) submits an application on a form provided by the ~~office of the state building commissioner~~ **division**;
 - (i) stating the name and address of the construction project; and
 - (ii) agreeing to comply with the provisions of subsections (c) and (e); and
- ~~(3) the applicant (B)~~ pays the fee for a foundation release set by 675 IAC 12-3.

(b) A foundation release may not be issued for a construction project unless requested at the time of the filing of the documents and payment of the fees required by section 5 of this rule.

(c) A foundation release shall allow work to grade level only which may include slab on grade and underground mechanical, electrical, and plumbing work, but does not allow work on more than one (1) floor below grade level. As an exception, any continuous structural member, such as a pole, may extend from its footing below grade to its intended height above grade.

(d) Any corrective work found to be necessary as a result of the project plan review conducted subsequent to the issuance of the foundation release shall be done at the applicant's expense.

(e) The issuance of a foundation release upon receipt of the documents and fees required by section 5 of this rule does not limit the ability of the ~~office of the state building commissioner~~ **division** to require additional information or fees required by this rule if subsequent plan review shows that such is necessary.

(f) Any construction work beyond foundation or grade level done under a foundation release shall be prohibited until an appropriate design release is issued.

(g) Requests for foundation releases shall be subject to the provisions of section 12 of this rule. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-14; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2695, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; errata, 11 IR 97; filed Sep 21, 1992, 9:00 a.m.: 16 IR 717; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 33. 675 IAC 12-6-15 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-15 Partial design releases

Authority: IC 22-13-2-13
Affected: IC 22-15-3

Sec. 15. (a) A partial design release may be issued by the ~~office of the state building commissioner with the approval of the office of the state fire marshal, division.~~

(b) Applicants for design releases may request partial design releases:

- (1) in order to facilitate project designing, bidding, and construction; or
- (2) for other valid reasons.

Requests for partial design releases shall be filed with all of the documents and fees required under section 5 of this rule ~~(675 IAC 12-6-5)~~ except to the extent ~~the~~ that plans and specifications outside the scope of the partial design release request need not be filed.

(c) Requests for partial design releases shall be submitted on a form provided by the ~~state building commissioner~~ **division** with the following information:

- (1) The name and address of the construction project.
- (2) The ~~state building commissioner's~~ **division's** project number.
- (3) The scope of the work involved in the desired partial design release.
- (4) ~~Such~~ Other reasonable data and information concerning compliance with the rules of the commission that the ~~state building commissioner~~ **division** requires.

(d) The document required by subsection (c) ~~of this section~~ shall be signed by the:

- (1) owner; and
- (2) design professional if one is required for the construction project.

(e) Each separate part of plans and specifications filed for partial design releases, **such as**:

- (1) foundation;
- (2) structure;
- (3) plumbing;
- (4) electrical; **and**
- (5) fire protection systems; ~~etc.~~

shall be submitted in sufficient detail to assure that its proposed portion complies with the rules of the commission.

(f) Any construction beyond the scope of a partial design release shall be prohibited until an appropriate design release is issued for the further construction work.

(g) Requests for partial design releases shall be subject to the provisions of section 12 of this rule. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-15; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2696, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was*

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filed Jul 17, 1987.]; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1006; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 34. 675 IAC 12-6-16 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-16 Master plan design release

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 22-15-3

Sec. 16. (a) Master plan design releases may be issued by the ~~office of the state building commissioner with the approval of the office of the state fire marshal:~~ **division**.

(b) As used in this section, "master plan" means a set of plans and specifications for Class 1 structures the scope of which includes only the structural framing and shell enclosures and does not include any:

- (1) mechanical;
- (2) plumbing;
- (3) electrical;
- (4) energy conservation; and
- (5) accessibility;

systems or components.

(c) The purpose of a master plan design release is to simplify the use of the same design for more than one (1) Class 1 structure by eliminating repetitive filing and review of plans and specifications within the scope of a master plan.

(d) To apply for a master plan design release, the applicant shall submit ~~the following~~ to the ~~office of the state building commissioner:~~ **division**:

- (1) An application for construction design release as provided for by section 6 of this rule.
- (2) The fee set for master plan filing in 675 IAC 12-3-4.
- (3) Plans and specifications as provided for by section 7 of this rule, except that plans and specifications normally required by section 7 ~~of this rule~~ but outside the scope of the desired master plan design need not be filed.

(e) The issuance of a master plan design release does not:

- (1) authorize any specific construction project; ~~and therefore does not or~~
- (2) eliminate the requirement for a separate design release to be applied for under section 5 of this rule.

All applications for design releases that utilize a master plan design shall reference the master plan design release number assigned by the ~~office of the state building commissioner:~~ **division**.

(f) Requests for master plan design releases shall be subject to the provisions of section 12 of this rule.

(g) A master plan design release shall expire when the ~~state building commissioner:~~ **division does the following**:

- (1) Determines that, because of changes in the Indiana Building Code, the plans and specifications may no longer comply with the rules of the commission. ~~and~~
- (2) Issues an order following the requirements of IC 4-21.5-3-6.

(h) If a petition for review of the ~~state building commissioner's division's~~ order under subsection (g) ~~of this section~~ is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the commission. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-16; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2696, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2098; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1007; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 35. 675 IAC 12-6-18 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-18 Addenda or revised design releases

Authority: IC 22-13-2-13

Affected: IC 22-15-3

Sec. 18. (a) No design changes or additions to the scope of work shall be made on a construction project subsequent to the issuance of an applicable design release unless an ~~addenda~~ **addendum** or revised design release is issued by the ~~office of the state building commissioner with the approval of the office of the state fire marshal:~~ **division**.

(b) Such design changes shall not include increases in project height or area.

(c) An applicant for an ~~addenda~~ **addendum** or revised design release shall submit the following to the ~~office of the state building commissioner:~~ **division**:

(1) On a form provided by the ~~state building commissioner,~~ **division**, which shall be signed by the owner and design professional, if one is required for the construction project, the following information:

- (A) The name and address of the construction project.
- (B) The ~~state building commissioner's division's~~ project number.
- (C) The scope of the work involved in the design changes or additions.
- (D) By page or sheet number, the portions of the original plans and specifications being changed.
- (E) ~~Such~~ Other reasonable data and information concerning compliance with the rules of the commission that the ~~state building commissioner~~ **division** may require.

- (2) One (1) copy of all changed plans and specifications.
- (3) The fee established in 675 IAC 12-3.

(d) Requests for addenda or revised design releases shall be

subject to the provisions of section 12 of this rule.

(e) Subsequent to the issuance of an ~~addenda~~ **addendum** or revised design release, the original design release remains in effect as modified by the ~~addenda~~ **addendum** or revision design release. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-18; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2697, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2098; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1007; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 36. 675 IAC 12-6-19 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-19 Copy of the design release; posting; maintenance of plans and specifications

Authority: IC 22-13-2-13
Affected: IC 22-15-3

Sec. 19. (a) A copy of the design release shall be posted by the applicant **as follows:**

- (1) In a conspicuous place on the premises.
- (2) Protected from the weather. ~~and~~
- (3) Located in such a position so it can be conveniently seen by inspectors.

(b) A complete set of plans and specifications that conform exactly to the design that was released by the ~~office of the state building commissioner~~ **division** shall be maintained on the construction job site.

(c) A copy of the design release shall remain posted, and plans and specifications maintained, on the construction job site until occupancy of the Class 1 structure. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-19; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2697, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1008; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 37. 675 IAC 12-6-20 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-20 Expiration of design releases

Authority: IC 22-13-2-13
Affected: IC 4-21.5-3-4; IC 4-21.5-3-7; IC 22-15-3

Sec. 20. (a) All design releases (except master plan releases) expire if the construction work on all buildings within the scope of the design release is not commenced within one (1) year of the date of ~~such the~~ release. However, an owner holding ~~a~~ **an unexpired** design release who is unable to commence construction work within one (1) year of the issuance of the design

release for good and satisfactory reasons may apply for an extension of time within which he or she may commence work under that design release. The ~~office of the state building commissioner~~ **division** may extend the design release one (1) time for a period not exceeding one hundred eighty (180) days if:

- (1) no changes have been made in the plans and specifications filed with the original application for a design release;
- (2) no changes to the rules of the commission applicable to the scope of the design release have been made;
- (3) the extension is requested in writing by the applicant verifying ~~subsection (a)(1); and~~ **subdivision (1);**
- (4) the release extension fee established by 675 IAC 12-3 has been paid; **and**
- (5) the extension of time will not adversely affect the public health, safety, or welfare.**

(b) If the construction work authorized by a design release is suspended or abandoned at any time after construction work is commenced for a period of one hundred eighty (180) days, ~~such the~~ construction work may be recommenced only after the issuance of a design release reinstatement by the ~~office of the state building commissioner. Such division.~~ **The** reinstatement may be issued by the ~~state building commissioner~~ **division** if:

- (1) the construction work has been suspended or abandoned for more than one hundred eighty (180) days but less than one (1) year;
- (2) no changes have been made in the plans and specifications filed with the original application for a design release;
- (3) no changes to the rules of the commission applicable to the scope of the design release have been made;
- (4) the reinstatement is requested in writing by the applicant verifying ~~subsection (b)(1) subdivisions (1) and (b)(2); (2);~~ **subdivisions (1) and (2);** and
- (5) the release reinstatement fee established by 675 IAC 12-3 has been paid.

(c) The order granting or denying a reinstatement or extension shall be issued by the ~~office of the state building commissioner~~ **division** following the requirements of IC 4-21.5-3-4. If a petition for review is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the commission. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-20; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2697, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2099; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 38. 675 IAC 12-6-21 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-21 Compliance with rules

Authority: IC 22-13-2-13
Affected: IC 22-15-3

Sec. 21. The issuance of a design release does not relieve the owner from compliance with all applicable rules of the commission even if items contrary to the rules of the commission are shown in plans and specifications that have been filed with the ~~office of the state building commissioner; division.~~ *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-21; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2698, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 39. 675 IAC 12-6-23 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-6-23 Design release revocations

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 22-12-7-7; IC 22-15-3

Sec. 23. (a) Under IC 22-12-7-7, the ~~state building commissioner division~~ may impose a sanction concerning any type of design release previously issued. Available sanctions are **as follows**:

- (1) Revocation.
- (2) Suspension.
- (3) Censure.
- (4) Reprimand. ~~and~~
- (5) Probation.

(b) The ~~state building commissioner division~~ may impose an appropriate sanction whenever one (1) or more of the following ~~exist~~: **exists**:

- (1) If a determination is made that the design release was obtained by fraudulent or misleading statements or information, including plans and specifications.
- (2) Circumstances have materially changed since a design release was granted so that if the sanction is not imposed, public health, safety, or welfare will be adversely affected.
- (3) The construction done subsequent to the issuance of the design release is contrary to the rules of the commission.
- (4) A check paying an applicable fee is returned.
- (5) The design release was issued:
 - (A) in error;
 - (B) on the basis of incorrect information; or
 - (C) in violation of:
 - (i) a rule of the commission;
 - (ii) **fire safety law**; or
 - (iii) a building law.

(c) The order imposing a sanction shall be issued under the requirements of IC 4-21.5-3-6. If a petition for review is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the commission. *(Fire Prevention and Building Safety Commission; 675 IAC 12-6-23; filed Jul 17, 1987, 2:30 p.m.: 10 IR 2698, eff Aug 1, 1987 [IC 4-22-2-36 suspends the effectiveness of a rule*

document for 30 days after filing with the Secretary of State. LSA Document #87-53 was filed Jul 17, 1987.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2100; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 40. 675 IAC 12-7-1 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-7-1 Purpose and scope

Authority: IC 22-13-2-13

Affected: IC 22-15-3-1

Sec. 1. (a) The purpose of this rule is to:

- (1) establish administrative procedures for the review of plans and specifications by certified cities, towns, or counties under ~~IC 22-15-3-1(c); IC 22-15-3-1; and thereby~~
- (2) reduce the time needed by the ~~office of the state building commissioner division~~ to issue a design release under 675 IAC 12-6.

(b) This rule pertains to the review of plans and specifications for Class 1 structures by a city, town, or county ~~prior to before~~ the granting or denying of a design release by the office of the ~~state building commissioner division~~ under IC 22-15-3 and 675 IAC 12-6.

(c) This rule does not apply to, or permit, plan review by a city, town, or county for **the following**:

- (1) Industrialized building systems.
- (2) Automatic fire-extinguishing or standpipe systems.
- (3) Regulated lifting devices. ~~and~~
- (4) Boilers and pressure vessels.

(Fire Prevention and Building Safety Commission; 675 IAC 12-7-1; filed Feb 1, 1988, 2:15 p.m.: 11 IR 1787; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2100; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 41. 675 IAC 12-7-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-7-2 Certification; application

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-4; IC 4-21.5-3-7; IC 22-13-2-3; IC 22-15-3-1

Sec. 2. (a) A city, town, or county that has in its employ a person qualified under this rule whose duties include the review of construction plans and specifications for conformance with applicable rules of the commission may apply for certification under ~~IC 22-15-3-1(c); IC 22-15-3-1.~~

(b) Application may be made in letter form by the executive **officer or** officers of a city, town, or county. An application shall include the following:

- (1) The name and title of each qualified plan reviewer.
- (2) Documents that show that each plan reviewer has successfully passed the competency test designated in this rule.
- (3) A signature card completed by each qualified plan

reviewer.

(4) A statement by the applicant that prompt notification shall be given to the ~~office of the state building commissioner~~ **division** upon the termination of employment or assignment to other duties of any qualified plan reviewer.

(5) A statement that the city, town, or county has adopted the rules of the commission under IC 22-13-2-3.

(c) The ~~state building commissioner~~ **division** shall, upon receipt of an application under this section, determine if the applicant city, town, or county is competent to perform plan review for Class 1 structures. The order granting or denying the certification shall be issued following the requirements of IC 4-21.5-3-4. If a petition for review is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the commission. (*Fire Prevention and Building Safety Commission; 675 IAC 12-7-2; filed Feb 1, 1988, 2:15 p.m.: 11 IR 1787; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2100; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 42. 675 IAC 12-7-3 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-7-3 Certification; sanctions

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 22-12-7-7; IC 22-15-3-1

Sec. 3. (a) Under IC 22-12-7-7, the ~~state building commissioner~~ **division** may impose a sanction concerning any certification of a city, town, or county. Available sanctions are as follows:

- (1) Revocation.
- (2) Suspension.
- (3) Censure.
- (4) Reprimand. ~~and~~
- (5) Probation.

(b) The ~~state building commissioner~~ **division** may impose an appropriate sanction whenever one (1) or more of the following ~~exist~~ **exists**:

- (1) It is determined that substantial and frequent failure to detect and report errors or omissions in plans and specifications that could result in noncompliance with applicable rules of the commission.
- (2) Failure to **do the following**:
 - (A) Comply with the procedural requirements of this rule.
 - ~~(3) Failure to~~ (B) Retain in employment at least one (1) qualified plan reviewer assigned to plan review duties.

(c) The order imposing a sanction shall be issued under the requirements of IC 4-21.5-3-6. If a petition for review is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the commission. (*Fire Prevention and Building Safety Commission; 675 IAC 12-7-3; filed Feb 1, 1988, 2:15 p.m.: 11 IR 1788; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2101; readopted filed Sep 11, 2001,*

2:49 p.m.: 25 IR 530)

SECTION 43. 675 IAC 12-7-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-7-4 Competency testing; written examinations

Authority: IC 22-13-2-13

Affected: IC 22-15-3-1

Sec. 4. (a) A written test shall be administered to determine if a person is a qualified plan reviewer for the purposes of this rule. The test shall be administered by the division. ~~of education and information of the fire and building services department.~~ The test shall be in **the following** two (2) parts:

- (1) The plans examiner test prepared by the International Conference of Building Officials (ICBO); ~~and Code Council (ICC).~~
- (2) The state plan review test prepared by the ~~office of the state building commissioner.~~ **division.**

(b) The test shall be administered not ~~less~~ **fewer** than two (2) times each year at the ~~department~~ **division** offices in Indianapolis, Indiana.

(c) The test shall be based on **the following**:

- (1) The editions of the ~~Uniform ICC Building Code~~ **Uniform Building Code Standards**, ~~Uniform Fire Code~~ **Uniform ICC Fire Code Standards** adopted by reference in 675 IAC 13 and 675 IAC 22.
- (2) Those portions of:
 - (A) the Indiana Building Code that are substantially different than the ~~Uniform ICC Building Code~~; and ~~those portions of~~
 - (B) 675 IAC 22 that are substantially different than the ~~Uniform ICC Fire Code~~.
- (3) The commission's rules:
 - (A) covering design releases in 675 IAC 12-6; and
 - ~~(4) the commission's rules~~ (B) found in 675 IAC 12-4.

(d) A person may make application to take the written test on forms provided by the division.

(e) The passing score for each part of the test is seventy-five (75).

(f) The ~~office of the state building commissioner~~ **division** shall revise the state plan review portion of the test as necessary to be consistent with **the following**:

- (1) The Indiana Building Code.
- (2) The Indiana fire ~~prevention~~ code. ~~and~~
- (3) Other commission rules in effect.

Any revised test shall be submitted to the commission for approval. (*Fire Prevention and Building Safety Commission; 675 IAC 12-7-4; filed Feb 1, 1988, 2:15 p.m.: 11 IR 1788; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2101; readopted filed Sep 11,*

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2001, 2:49 p.m.: 25 IR 530)

SECTION 44. 675 IAC 12-7-5 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-7-5 Local plan review; procedures; seals

Authority: IC 22-13-2-13

Affected: IC 22-15-3

Sec. 5. (a) A city, town, or county certified to perform plan review of Class 1 structures shall adhere to the following procedures:

- (1) Plans and specifications shall be checked for compliance with 675 IAC 12-6, Design Releases.
- (2) A report of errors and omissions shall be prepared for each construction project covered by submitted plans and specifications.
- (3) The report of errors and omissions shall include a citation reference to the exact section of a rule of the commission for each error or omission noted by the plan reviewer.
- (4) Upon preparation, the report of errors and omissions shall be mailed directly to the ~~office of the state building commissioner~~ **division** on the same working day. A copy may be furnished to the applicant for the design release.
- (5) The local qualified plan reviewer shall stamp each set of submitted plans and specifications with a seal provided by the ~~office of the state building commissioner~~ **division**.
- (6) The ~~local~~ plan reviewer will affix his or her signature over the seal to identify those sets to be subsequently submitted to the ~~office of the state building commissioner~~ **division** in accordance with 675 IAC 12-6.
- (7) The stamped set of plans and specifications shall be returned to the applicant with an instruction to submit them, with a completed application for construction design release, to the ~~office of the state building commissioner~~ **division** in accordance with 675 IAC 12-6.

(b) The seal provided by the ~~office of the state building commissioner~~ **division** shall remain the property of the ~~office of the state building commissioner~~ **division**.

(c) The certified city, town, or county may obtain a supply of application for construction document release forms from the ~~office of the state building commissioner~~ **division** for the convenience of plan review applicants. (*Fire Prevention and Building Safety Commission; 675 IAC 12-7-5; filed Feb 1, 1988, 2:15 p.m.: 11 IR 1788; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2101; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 45. 675 IAC 12-8-1 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-1 Definitions

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 1. The following definitions apply throughout this rule:

(1) "Building code" means the Indiana Building Code under ~~675 IAC 13-2-1~~ **675 IAC 13-2.4**.

(2) "Existing building" means a building or structure that has been:

(A) issued a certificate of occupancy; or ~~has been~~

(B) legally occupied.

(3) "Historic building" means any structure that is important to the:

(A) general;

(B) archaeological;

(C) agricultural;

(D) economic;

(E) social;

(F) political;

(G) architectural;

(H) industrial; or

(I) cultural;

history of the United States or Indiana.

(4) "Protected opening" means an opening in a ~~fire-resistive area or occupancy separation fire barrier or fire wall~~ meeting the requirements of the Indiana Building Code.

(5) "Rehabilitation" means returning or upgrading a building or structure to a state of utility through **any of the following**:

(A) Additions.

(B) Alterations. ~~or~~

(C) Repairs.

(*Fire Prevention and Building Safety Commission; 675 IAC 12-8-1; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1275, eff Mar 1, 1988; filed Oct 19, 1990, 2:38 p.m.: 14 IR 442; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2102; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 46. 675 IAC 12-8-3 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-3 Application and scope

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 3. (a) This rule applies to existing buildings when specifically requested by the building owner or owner's agent at the time of an application for design release under 675 IAC 12-6. Upon receipt of ~~such~~ a request, the ~~offices of the state building commissioner and the state fire marshal~~ **division** shall have the plans for rehabilitation reviewed against the requirements of this rule to determine whether or not the existing building, with proposed work incorporated, is in compliance. The ~~office of the state building commissioner~~ **division** may require an on-site inspection by a ~~department~~ **division** employee, **together with payment of the fee required under 675 IAC 12-3-11**, to assist in the determination. If compliance with this rule has been achieved, a design release for that rehabilitation shall be issued. Full compliance with all the rules of the commission shall be required for all construction work done in the rehabilitation. The minimum number of exits **and egress**

width required by the building code shall be provided before this rule may be used.

(b) This rule may be applied to existing buildings that will continue to be, or are proposed to be, Building Types 1 through 11 of Table 3, as follows:

- (1) If an existing building is to be changed in use, occupancy, or location, this rule regarding that new use, occupancy, or location shall apply.
- (2) If a portion of an existing building is to be changed in use, occupancy, or location, this rule regarding that new use, occupancy, or location shall apply to the entire building.
- (3) Additions to existing buildings shall comply with the rules for new construction. The combined height or area of any existing building with its additions shall not exceed the values prescribed in the building code.
- (4) An existing building or portion thereof shall not be altered or repaired so as to make it less safe than it was before ~~such~~ **the** alteration or repair.
- (5) When there is a change of use, only those elements of the existing building proposed for alteration of, or addition to, must conform to the accessibility requirements for new construction. ~~Exceptions shall be as follows:~~ **The following are not required to conform to the accessibility requirements for new construction under the building code where there is a change of use under this rule:**
 - (A) Type 9 buildings (see Table 3) less than four (4) stories on floors or levels where accessibility is not existing.
 - (B) Type 6 and Type 7 buildings less than four (4) stories on floors or levels, other than grade, where accessibility is not existing.
 - (C) Type 10 and Type 11 buildings on floors or levels, other than grade, where accessibility is not existing.
- (6) Where a conflict between provisions of this rule occurs, those provisions that secure the greatest public safety shall apply.

INTENDED USE OF EXISTING BUILDINGS

TABLE 3

Building Types	Description
1	Theaters
2	Nightclubs, dance halls, and similar uses that serve over fifty (50) persons
3	Lecture halls, auditoriums, terminals, recreation centers, and restaurants other than nightclubs that serve over fifty (50) persons
4	Churches and other religious facilities, including "Sunday schools", but excluding Building Type 5 structures
5	School buildings and day care centers that are not classified as I-4 occupancies
6	Office buildings, other buildings where income is based upon service provided, and assembly areas for less fewer than fifty (50) persons

- 7 Factories and industrial buildings other than those involving flammable, combustible, or explosive products or materials
- 8 Wholesale and retail stores, other than buildings where income is based upon goods provided
- 9 Hotels, motels, apartments, condominiums, barracks, dormitories, bed and breakfast establishments, and attached one (1) and two (2) family dwellings
- 10 Moderate hazard storage **and** automotive and aircraft storage and repair
- 11 Low hazard storage, including automotive and aircraft storage without repair

(7) For institutional occupancies, ~~Appendix A of National Fire Protection Association Standard Number 101-1998~~ **101A, 2001 Edition**, shall be recognized as an alternative means of evaluation for conversion to and for existing buildings of ~~Group I occupancy: I-1, I-2, and I-4 occupancies.~~

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-3; filed Dec 3, 1987, 2:22 p.m.: 11 IR 1275, eff Mar 1, 1988; filed Apr 26, 1988, 2:45 p.m.: 11 IR 3042; filed Oct 19, 1990, 2:38 p.m.: 14 IR 443; errata, 14 IR 761; errata filed Dec 12, 1990, 1:45 p.m.: 14 IR 1070; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2236; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2102; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1008; errata filed Jan 31, 2001, 9:22 a.m.: 24 IR 1670; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 47. 675 IAC 12-8-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-4 Implementation

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 4. (a) For any proposed work to be governed by this rule, the owner or owner's agent shall cause the existing building to be investigated and evaluated in accordance with this rule.

(b) The owner or owner's agent shall have a structural evaluation of the existing building made to determine the adequacy of all structural systems for the proposed:

- (1) alterations;
- (2) addition;
- (3) change of use;
- (4) occupancy; or
- (5) location.

The results of this investigation and evaluation, along with any proposed compliance alternatives, shall be submitted to the ~~office of the state building commissioner division~~ under the seal and signature of an architect or engineer licensed to practice in Indiana. Work shall not commence unless the existing building meets or can be made to sustain the design loads for new construction.

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(c) The owner or owner's agent shall have an evaluation of the existing building made regarding the fire safety of the building. In conducting this evaluation, the worst case condition shall be used to establish values for tabulation. This investigation and evaluation shall be divided into the following three (3) categories as represented by the three (3) columns on the building score sheet in section 23 of this rule:

(1) Fire safety includes:

- (A) structural fire-resistance;
- (B) detection;
- (C) alarm; and
- (D) extinguishing;

features of the building.

(2) Means of egress includes the:

- (A) configuration;
- (B) characteristics; and
- (C) support features;

for the means of egress.

(3) General safety includes the fire safety and means of egress parameters.

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-4; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1276, eff Mar 1, 1988; filed Oct 19, 1990, 2:38 p.m.: 14 IR 444; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2103; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 48. 675 IAC 12-8-5 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-5 Fire safety tabulation

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 5. A building score sheet conforming to section 23 of this rule shall be used for tabulation of existing building values for each building, or portion thereof, to be considered for rehabilitation, change of use, occupancy, or location. The:

(1) completed building score (sheet) of the existing building; ~~along with and~~

(2) plans and specifications for any proposed compliance alternatives;

shall be submitted to the ~~office of the state building commissioner~~ **division** under the seal and signature of an architect or engineer licensed to practice in Indiana. Elements of the building shall be scored in accordance with this section and sections 6 through 22 of this rule. *(Fire Prevention and Building Safety Commission; 675 IAC 12-8-5; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1277, eff Mar 1, 1988; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2103; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 49. 675 IAC 12-8-6 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-6 Height and area

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 6. (a) Determine the height of the existing building in both feet and number of stories, including proposed additions, and compare that height with the maximum allowable height under the rules for new construction.

(b) Determine the floor area of the existing building, including proposed additions, and compare the area with the maximum allowable floor area under the rules for new construction. When an area separation wall **or 2, 3, or 4-hour fire wall** conforming to the requirements of the building code is provided between the existing building and any addition, that addition shall be considered a separate building.

(c) Using subsections (a) ~~through~~ **and** (b), categorize the existing building, then use the following procedure to determine the value to be entered on the building score sheet under fire safety, means of egress, and general safety:

CATEGORY

VALUES*

- | | |
|---|---|
| a | If both height and area exceed the maximum allowable limits of the building code, multiply -2 by the construction type factor found in Table 11-B in section 11(b) of this rule |
| b | If either height or area, but not both, exceed the maximum allowable limits of the building code, multiply -1 by the construction type factor found in Table 11-B in section 11(b) of this rule |
| c | If both height and area conform to the requirements of the building code, the value is zero (0) |

*Round the value off to the closest whole number. *(Fire Prevention and Building Safety Commission; 675 IAC 12-8-6; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1277, eff Mar 1, 1988; filed Oct 19, 1990, 2:38 p.m.: 14 IR 444; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2104; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 50. 675 IAC 12-8-7 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-7 Automatic fire-extinguishing systems

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 7. (a) Determine the existence and extent, and evaluate the capacity of, sprinkler systems in the existing building, including proposed additions, alterations, and corrections to those systems. Use the categories in subsection (b) and Table 7 to:

- (1) obtain the fire-extinguishing systems value; and
- (2) enter that value on the building score sheet under fire safety, means of egress, and general safety.

(b) Fire-extinguishing systems categories shall be as follows:

- (1) Category a. Systems not provided when the building code

would require them.

(2) **Category b.** None, when the building code would not require them and partial systems provided in accordance with the building code.

(3) **Category c.** Buildings protected with an automatic fire-extinguishing system designed and installed according to the standards listed in the building code for new construction, for the use, type of construction, and occupancy proposed.

Exception: Water supply requirements for the standpipes or hose stream need not be included in the calculations when a fire department connection is provided.

(4) **Category d. (c)** Partial sprinkler systems not otherwise required by the building code may be given partial credit by the fire prevention and building safety commission.

FIRE-EXTINGUISHING SYSTEMS VALUES

TABLE 7

Building Type (Renovation)	Categories		
	a	b	c
1	-15	0	21
2	-20	0	17
3	-15	0	21
4	-10	0	30
5	-10	0	30
6	-10	0	36
7	-15	0	29
8	-15	0	28
9	-15	0	28
10	-15	0	35
11	-10	0	35

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-7; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1277, eff Mar 1, 1988; filed Oct 19, 1990, 2:38 p.m.: 14 IR 444; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2104; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 51. 675 IAC 12-8-8 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-8 Fire area

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 8. (a) Calculate the total net square footage of the largest area within the existing building that is separated from the remainder of the building by not less than two-hour fire-resistive construction, as specified in the building code. Use Table 8 and the categories listed in subsection (b) to:

- (1) determine the compartment area value for the existing building; and
- (2) enter that value on the building score sheet under fire safety, means of egress, and general safety.

(b) Fire area categories shall be as follows:

- (1) **Category a.** Greater than fifteen thousand (15,000)

square feet.

(2) **Category b.** Ten thousand one (10,001) to fifteen thousand (15,000) square feet.

(3) **Category c.** Seven thousand five hundred one (7,501) to ten thousand (10,000) square feet.

(4) **Category d.** Seven thousand five hundred (7,500) square feet or less.

FIRE AREA VALUES

TABLE 8

Building Type	Categories			
	a	b	c	d
1	-8	-2	2	3
2	-12	-6	-2	-1
3	-8	-2	2	3
4	-6	-1	4	5
5	-6	-1	4	5
6	-6	-1	4	5
7	-4	0	6	8
8	-4	0	6	8
9	-4	0	6	8
10	-4	0	6	8
11	-6	1	4	5

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-8; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1278, eff Mar 1, 1988; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2104; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 52. 675 IAC 12-8-9 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-9 Space division

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 9. (a) Evaluate the subdivision of a fire area by walls and partitions exclusive of those described in ~~675 IAC 12-8-8 sections 8 and 675 IAC 12-8-10~~ **10 of this rule** using the categories listed ~~below in subsection (b)~~ and Table 9 then enter that value on the building score sheet under fire safety, means of egress, and general safety.

(b) Space division categories **shall be as follows:**

- (1) **Category a.** No partitions or partial partitions.
- (2) **Category b.** Fixed partitions to ceilings, with self-closing or automatic-closing doors.
- (3) **Category c.** Floor to deck partitions, without self-closing or automatic-closing doors.
- (4) **Category d.** Floor to deck partitions, with self-closing or automatic-closing doors.

SPACE DIVISION VALUES

TABLE 9

BUILDING TYPE	CATEGORIES TYPE			
	a	b	c	d

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1	0	0	0	0
2	-6	-4	-1	0
3	0	1	4	6
4	0	1	4	6
5	0	1	4	6
6	0	1	4	6
7	0	1	4	6
8	0	1	4	6
9	0	1	4	6
10	0	1	4	6
11	1	4	6	8

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-9; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1278, eff Mar 1, 1988; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 53. 675 IAC 12-8-10 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-10 Corridor walls/partitions

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 10. (a) Evaluate the corridor walls and partitions based upon their fire resistance and completeness. Using the categories listed in subsection (b) and Table 10, obtain the corridor walls/partition value, then enter that value on the building score sheet under fire safety, means of egress, and general safety.

(b) Corridor wall/partition categories shall be as follows:

- (1) **Category a.** No partitions, incomplete partitions, no doors, or doors not self-closing **with positive latching.**
- (2) **Category b.** Less than one-hour fire-resistive or not floor to deck.
- (3) **Category c.** One-hour to less than two-hour fire-resistive, in accordance with the building code (to include exceptions).
- (4) **Category d.** Walls or partitions with a fire-resistive rating of two (2) hours or more, with protected openings.

CORRIDOR PARTITION/WALL VALUES

TABLE 10

Building Type	Categories			
	a	b	c	d
1	-10	-4	0	2

2	-30	-12	0	2
3	-7	-3	0	2
4	-5	-2	0	5
5	-5	-2	0	5
6	-5	-2	0	5
7	-7	-3	0	2
8	-7	-3	0	2
9	-7	-3	0	2

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-10; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1279, eff Mar 1, 1988; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2105; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 54. 675 IAC 12-8-11 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-11 Vertical openings

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 11. (a) Use the formula in subsection (b), Table 11-A, and Table 11-B to determine the vertical opening value, then enter it on the building score sheet under fire safety, means of egress, and general safety. Unenclosed vertical openings conforming to the building code shall not be considered in the evaluation of vertical openings.

(b) The vertical opening formula shall be as follows:

- (1) $VO = PV \times CF$.
- (2) VO = vertical opening value.
- (3) PV = protection value from Table 11-A.
- (4) CF = construction type factor from Table 11-B.

*Round the value off to the closest whole number.

VERTICAL OPENING PROTECTION VALUES

TABLE 11-A

Protection	Value
None (unprotected opening)	-10
Less than one-hour	-5
One to less than two-hour*	1
Two-hour or more	2

CONSTRUCTION TYPE FACTOR

TABLE 11-B

Type of Construction*

	I		II			III		IV		V	
	F.R. A		F.R.	One-Hour A	NB	One-Hour A	N B	H.T.		One-Hour A	N B
FACTOR	1 1.2		1.2	2.2	3.5	2.5	3.5	2.3		3.3	7

*As defined in *Or when shafts of fire-resistive construction are not required by the building code.

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-11; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1279, eff Mar 1, 1988; filed Oct

19, 1990, 2:38 p.m.: 14 IR 445; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2105; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 55. 675 IAC 12-8-12 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-12 Heating, ventilating, and air-conditioning (HVAC) systems

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 12. (a) Determine the number of floors served by an individual HVAC system, then use the categories listed below in subsection (b) and Table 12 to obtain the HVAC system value, then record that value on the building score sheet under fire safety, means of egress, and general safety.

(b) HVAC categories shall be as follows:

- (1) **Category a.** Greater than five (5) floors, or combustibles in air plenums or corridors used as air plenums.
- (2) **Category b.** Three (3) to five (5) floors.
- (3) **Category c.** Two (2) floors.
- (4) **Category d.** One (1) floor, or central boiler/chiller with no ductwork connecting two (2) or more floors.

HVAC SYSTEM VALUES

TABLE 12

BUILDING TYPES	CATEGORIES			
	a	b	c	d
1	0	2	5	7
2	-10	-5	0	2
3	-5	0	2	5
4	0	2	5	7
5	0	2	5	7
6	0	2	5	7
7	-5	0	2	5
8	-5	0	2	5
9	-5	0	2	5
10	-5	0	2	5
11	0	2	5	7

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-12; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1280, eff Mar 1, 1988; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 56. 675 IAC 12-8-13 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-13 Automatic alarms

Authority: IC 22-13-4-5

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 13. (a) Evaluate the ability of automatic fire alarms to detect smoke in all areas of the existing building. Using the categories listed in subsection (b) and Table 13:

- (1) determine the alarm system values; and
- (2) enter that value on the building score sheet under fire safety, means of egress, and general safety.

(b) Automatic alarm categories shall be as follows:

- (1) **Category a.** None.
- (2) **Category b.** HVAC return only.
- (3) **Category c.** Elevator lobby only.
- (4) **Category d.** HVAC return, elevator lobby, and single station units in Type 9 buildings.
- (5) **Category e.** All corridors, including elevator lobby.
- (6) **Category f.** Total space, including HVAC return, conforming to the requirements for new construction.

AUTOMATIC ALARM VALUES

TABLE 13

Building Type	Categories					
	a	b	c	d	e	f
1	-10	-5	0	2	4	6
2	-30	-10	-5	0	2	4
3	-10	-5	0	2	4	6
4	0	2	4	6	8	12
5	0	2	4	6	8	12
6	0	2	4	6	8	12
7	-10	-5	0	2	4	6
8	-10	-5	0	2	4	6
9	-10	-5	0	2	4	6
10	-10	-5	0	2	4	6
11	0	2	4	6	8	12

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-13; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1280, eff Mar 1, 1988; filed Apr 26, 1988, 2:45 p.m.: 11 IR 3044; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2106; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 57. 675 IAC 12-8-14 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-14 Communications

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 14. (a) Evaluate the capability of building alarm systems to communicate with all building occupants in an emergency using the categories in subsection (b) and Table 14, and record that communication value on the building score sheet under fire safety, means of egress, and general safety.

(b) Communication categories shall be as follows:

- (1) **Category a.** None.
- (2) **Category b.** Manual fire alarms conforming to the Indiana

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fire prevention building code.

(3) **Category c.** Fire alarms conforming to the ~~Indiana fire prevention building~~ code, with a public address or voice communication system installed throughout the building.

(4) **Category d.** Central control stations conforming to the building code.

COMMUNICATION VALUES

TABLE 14

Building Type	Categories			
	a	b	c	d
1	-10	-5	0	5
2	-10	-5	0	5
3	-10	-5	0	5
4	-10	-5	0	5
5	-10	-5	0	5
6	-5	0	5	10
7	0	5	10	15
8	-5	0	5	10
9	-5	0	5	10
10	0	5	10	15
11	0	5	10	15

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-14; filed Dec 2, 1987, 2:22 p.m.; 11 IR 1280, eff Mar 1, 1988; errata, 11 IR 1309; filed Oct 19, 1990, 2:38 p.m.; 14 IR 446; filed Jan 30, 1998, 4:00 p.m.; 21 IR 2106; readopted filed Sep 11, 2001, 2:49 p.m.; 25 IR 530)

SECTION 58. 675 IAC 12-8-15 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-15 Smoke control

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 15. (a) Evaluate the ability to control the movement of smoke in the existing building by natural or mechanical means. Using the categories listed in subsection (b) and Table 15:

- (1) determine the smoke control value; and
- (2) record that value under means of egress and general safety on the building score sheet.

(b) Smoke control categories shall be as follows:

- (1) **Category a.** None.
- (2) **Category b.** Windows operable without special keys or tools (total building).
- (3) **Category c.** One (1) smoke-proof enclosure and building having operable windows.
- (4) **Category d.** One (1) stair having operable exterior windows and building having operable windows.
- (5) **Category e.** Smoke control systems in accordance with the building code.

(6) **Category f.** Smoke-proof enclosures in accordance with the building code.

SMOKE CONTROL VALUES*

TABLE 15

Building Type	Categories					
	a	b	c	d	e	f
1	-6	-5	-4	-3	0	0
2	-6	-5	-4	-3	0	0
3	-6	-5	-4	-3	0	0
4	-3	-3	-3	-2	0	2
5	-3	-3	-3	-2	0	2
6	0	2	3	3	3	4
7	0	2	2	3	3	3
8	0	2	3	3	3	4
9	0	2	3	3	3	4
10	0	2	2	3	3	3
11	0	2	2	3	3	3

*Any positive value shall be zero (0) if compliance with categories **Category d, e, or f** in Table 13 in section 13 of this rule has not been obtained. *(Fire Prevention and Building Safety Commission; 675 IAC 12-8-15; filed Dec 2, 1987, 2:22 p.m.; 11 IR 1281, eff Mar 1, 1988; filed Jan 30, 1998, 4:00 p.m.; 21 IR 2107; readopted filed Sep 11, 2001, 2:49 p.m.; 25 IR 530)*

SECTION 59. 675 IAC 12-8-17 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-17 Dead ends

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 17. (a) Determine the length of any dead-end corridors. Using the categories ~~below~~ in subsection (b) and Table 17:

- (1) obtain the dead end value; and
- (2) enter that value under means of egress and general safety on the building score sheet.

Dead-end corridors in excess of fifty (50) feet are prohibited.

(b) Dead-end categories:

- (1) **Category a.** Dead-end corridors of more than twenty (20) feet, ~~(20+)~~, but less than fifty (50) feet. ~~(50+)~~.
- (2) **Category b.** Dead-end corridors of twenty (20) feet ~~(20+)~~ or less.

DEAD END VALUES

TABLE 17

BUILDING TYPE	CATEGORIES	
	a	b
1	-5	0
2	-10	0

3	-5	0
4	-5	0
5	-5	0
6	0	5
7	0	5
8	0	5
9	-5	0
10	0	5
11	0	5

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-17; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1281, eff Mar 1, 1988; errata, 11 IR 1309; errata, 11 IR 1607; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 60. 675 IAC 12-8-18 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-18 Maximum travel distance

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 18. (a) Determine the longest length of travel to an approved exit, then, using the categories listed in subsection (b) and Table 18:

- (1) obtain the maximum travel distance value; and
- (2) enter that value under means of egress and general safety on the building score sheet.

(b) Travel distance categories shall be as follows:

- (1) **Category a.** Exceeds the limits set by the building code.
- (2) **Category b.** Complies with the limits set by the building code.
- (3) **Category c.** Is less than ~~half~~ **one-half** (½) the limits set by the building code.

TRAVEL DISTANCE VALUES
TABLE 18

Building Type	Categories		
	a	b	c
1	-10	0	5
2	-10	0	5
3	-10	0	5
4	-10	0	5
5	-10	0	5
6	-5	0	10
7	-5	0	10
8	-5	0	10
9	-10	0	5
10	-5	0	10
11	-5	0	10

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-18; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1282, eff Mar 1, 1988;

filed Jan 30, 1998, 4:00 p.m.: 21 IR 2108; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 61. 675 IAC 12-8-19 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-19 Elevator control

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 19. (a) Evaluate the elevator equipment and controls, then using the categories listed ~~below~~ in subsection (b) and Table 19:

- (1) determine the elevator control value; and
- (2) enter it on the building score sheet under fire safety, means of egress, and general safety.

(b) Elevator control categories **shall be as follows:**

- (1) **Category a.** None, or no elevator in buildings four (4) or more stories high.
- (2) **Category b.** Fire department control or no elevator in buildings two (2) or three (3) stories high.
- (3) **Category c.** Automatic recall.
- (4) **Category d.** Fire department control and automatic recall or buildings one (1) story high.

ELEVATOR CONTROL VALUES
TABLE 19

BUILDING TYPE	CATEGORIES			
	a	b	c	d
1	0	3	6	9
2	0	3	6	9
3	-7	0	3	6
4	-7	0	3	6
5	-7	0	3	6
6	-7	0	3	6
7	-7	0	3	6
8	-7	0	3	6
9	-7	0	3	6
10	-10	-7	0	3
11	-10	-7	0	3

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-19; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1282, eff Mar 1, 1988; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 62. 675 IAC 12-8-20 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-20 Egress lighting

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 20. (a) Evaluate the existence and dependability of

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emergency lighting, then, using the categories listed in subsection (b) and Table 20:

- (1) determine the egress lighting value; and
- (2) enter it under means of egress and general safety on the building score sheet.

(b) Egress lighting categories shall be as follows:

- (1) **Category a.** None.
- (2) **Category b.** Lighting in accordance with the building code, but without separate sources of power, if required.
- (3) **Category c.** Full compliance with the building code.

EGRESS LIGHTING VALUES
TABLE 20

Building Type	Categories		
	a	b	c
1	-20	-10	0
2	-20	-10	0
3	-20	-10	0
4	-20	-10	0
5	-20	-10	0
6	-10	0	2
7	-5	0	2
8	-10	0	2
9	-10	0	2
10	-5	0	2
11	0	2	7

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-20; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1282, eff Mar 1, 1988; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2108; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 63. 675 IAC 12-8-21 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-8-21 Mixed uses

Authority: IC 22-13-4-5

Affected: IC 22-11; IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 21. (a) When an existing building is to be used by more than one (1) occupancy as defined in the building code, then the:

- (1) separation of occupancies shall be evaluated using the categories listed in subsection (b) and Table 21; and ~~the~~
- (2) mixed use value obtained entered under fire safety and general safety on the building score sheet.

(b) Mixed use categories shall be as follows:

- (1) **Category a.** Not in compliance with the building code.
- (2) **Category b.** In compliance with the building code.

MIXED USE VALUES
TABLE 21

Building Type	Categories	
	a	b

1	-10	0
2	-10	0
3	-5	0
4	-5	0
5	-5	0
6	-5	0
7	-5	0
8	-5	0
9	-10	0
10	-5	0
11	-5	0

(Fire Prevention and Building Safety Commission; 675 IAC 12-8-21; filed Dec 2, 1987, 2:22 p.m.: 11 IR 1283, eff Mar 1, 1988; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2108; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 64. 675 IAC 12-9-1 IS AMENDED TO READ AS FOLLOWS:

Rule 9. State Fire Marshal; Permits

675 IAC 12-9-1 Purpose

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 1. The purpose of this rule (~~675 IAC 12-9-1~~) is to establish administrative procedures for the:

- (1) application;
- (2) issuance; and
- (3) renewal;

of permits by the ~~office of the~~ state fire marshal. *(Fire Prevention and Building Safety Commission; 675 IAC 12-9-1; filed Feb 1, 1988, 2:17 p.m.: 11 IR 1790; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 65. 675 IAC 12-9-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-9-2 Definitions

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12-1; IC 22-14-2; IC 22-14-3-2

Sec. 2. (a) The definitions in this section apply only to this rule. (~~675 IAC 12-9-2~~).

(b) "Amusement" means the same as entertainment.

(c) "Entertainment" means a performance or show designed to amuse or divert an assembly of persons.

(d) "Place" means, in the context of a place of amusement or entertainment, ~~either:~~ **any of the following:**

- (1) A building primarily classified or capable of being classified as a Group A Occupancy under the Indiana

Building Code (675 IAC 13). ~~or~~

(2) A room classified or capable of being classified as a Group A Occupancy under the Indiana Building Code (675 IAC 13). ~~or~~

(3) A structure classified or capable of being classified as a Group A-4 Occupancy under the Indiana Building Code (675 IAC 13). ~~or~~

(4) A designated outdoor area upon which are installed or erected temporary or permanent regulated amusement devices as defined in 675 IAC 23-1-4.

(e) "Regulated place of amusement or entertainment" means any of the following:

(1) A:

(A) theater;

(B) opera house;

(C) movie theater;

(D) dance hall;

(E) night club with a stage or floor show; or

(F) another place that offers an amusement or entertainment to the public for consideration or promotional purposes.

(2) A place where a boxing exhibition is conducted under the supervision of the state boxing commission.

(3) A hall, gymnasium, or place of assembly where a:

(A) school;

(B) college;

(C) university;

(D) social or fraternal organization;

(E) lodge;

(F) farmers organization;

(G) society;

(H) labor union;

(I) trade association; or

(J) church;

holds any type of amusement.

(4) A public or private place where a regulated amusement device is operated.

(f) "State fire marshal" means either of the following:

(1) The state fire marshal appointed under IC 22-14-2.

(2) Any employee of the state fire marshal.

(g) "Use" means, in the context of IC 22-14-3-2(b), a specified type of amusement or entertainment event intended by a permit applicant to be conducted at or in a regulated place of amusement or entertainment. (*Fire Prevention and Building Safety Commission; 675 IAC 12-9-2; filed Feb 1, 1988, 2:17 p.m.: 11 IR 1790; errata, 11 IR 2632; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 66. 675 IAC 12-9-3 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-9-3 Amusement and entertainment permits

Authority: IC 22-12-6-6

Affected: IC 22-12-6-7; IC 22-14-3-2; IC 22-14-3-3

Sec. 3. (a) An applicant for an annual amusement and entertainment permit shall submit an application, with the applicable fee as set in IC 22-12-6-7, to the ~~office of the~~ state fire marshal on forms provided by ~~that office.~~ **the division.** An application may be submitted as early as September 1 of the year preceding the calendar year for which a permit will cover. Each application shall provide the information required by IC 22-14-3-3 and the following:

(1) A listing of each use, giving the:

(A) days and hours of operation of regularly scheduled events; and ~~the~~

(B) dates and inclusive times of special events planned to be conducted;

in the calendar year for which a permit is to cover.

(2) An attached floor plan or site plan showing **the following:**

(A) The planned arrangement of other than fixed seating. ~~and~~

(B) The location of **the following:**

(i) Aisles.

(ii) Exit ways.

(iii) Barriers.

(iv) Steps. ~~or~~

(v) Other crowd movement or control facilities, equipment, signs, or personnel.

(3) The maximum occupancy intended for both seated and standing attendees.

(4) The name, address, and telephone number of the person to be contacted to arrange for inspections by the ~~office of the~~ state fire marshal.

(b) An applicant for a special event endorsement to an annual amusement and entertainment permit shall submit an application to the ~~office of the~~ state fire marshal on forms provided by ~~that office.~~ **the division.** Each application shall provide the following information:

(1) The permit number and address of the regulated place of amusement or entertainment for which an endorsement is sought.

(2) The name, address, and telephone number of the applicant if different than the applicant for the annual permit.

(3) The additional use, dates, and times of a special event not covered in the annual permit.

(4) An additional floor or site plan for the special event if different than the plans submitted with the application for the annual permit.

(5) The maximum occupancy intended for both seated and standing attendees.

(c) A permit issued under IC 22-14-3-2 and this section expires on December 31 in the year it is issued. (*Fire Prevention and Building Safety Commission; 675 IAC 12-9-3; filed*

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Feb 1, 1988, 2:17 p.m.: 11 IR 1790; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2237; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 67. 675 IAC 12-9-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-9-4 Regulated explosives magazine permits

Authority: IC 22-13-2-13

Affected: IC 22-12

Sec. 4. (a) An applicant for an annual regulated explosives magazine permit shall submit an application to the ~~office of the~~ state fire marshal on forms provided by ~~that office: the division~~. An application may be submitted at any time to cover a period of one (1) year from the issue date. Each application shall provide the information required by IC 22-14-4-5 [*IC 22-14-4 was repealed by P.L.123-2002, SECTION 51, effective July 1, 2002.*] and the following:

(1) The name, address, and telephone number of the following:

(A) The applicant.

(2) ~~The name, address and telephone number of~~ (B) The person exercising control over the explosives magazines if not the applicant.

~~(3)~~ (2) Plans and specifications of the magazine construction, if necessary to perform the inspection required by IC 22-14-4-5(a)(2) [*IC 22-14-4 was repealed by P.L.123-2002, SECTION 51, effective July 1, 2002.*].

(b) The ~~office of the~~ state fire marshal shall determine that the type and number of explosives magazines to be covered by the permit are adequate to store the types and maximum quantities of explosives stated in the permit application. The determination shall be made in accordance with the Indiana Fire ~~prevention~~ Code under ~~675 IAC 22-2~~: **675 IAC 22**.

(c) The ~~office of the~~ state fire marshal shall make, or cause to be made, an inspection of explosives magazines for compliance with the Indiana Fire ~~prevention~~ Code under 675 IAC 22 ~~prior to before~~ the issuance of the explosives magazine permit.

(d) Explosives magazines used in connection with analytical laboratories or laboratories operated by a college, university, school, or educational entity for the purpose of instruction or research are exempt from the permit requirements of this section. However, such laboratories must be approved by the ~~office of the~~ state fire marshal under the alternate criteria for explosive laboratory operations as established in the Indiana Fire ~~prevention~~ Code under 675 IAC 22. (*Fire Prevention and Building Safety Commission; 675 IAC 12-9-4; filed Feb 1, 1988, 2:17 p.m.: 11 IR 1791; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2109; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 68. 675 IAC 12-9-5 IS AMENDED TO READ

AS FOLLOWS:

675 IAC 12-9-5 Permits for supervised public display of fireworks

Authority: IC 22-11-14-2

Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 5. (a) An applicant for a permit to conduct a supervised public display of fireworks shall submit an application to the ~~office of the~~ state fire marshal on forms provided by ~~that office: the state fire marshal~~. Applications must be received by the ~~office division~~ not ~~less fewer~~ than fifteen (15) calendar days ~~prior to before~~ the date of display. ~~Pursuant to Under~~ IC 22-11-14-2, the application shall be accompanied by a brief resume of the fireworks display ~~operator's or~~ operators' experience in the following:

(1) Preparation of the display.

(2) Igniting or discharging of fireworks.

(3) Implementing emergency procedures. ~~and~~

(4) Disposal of unfired or defective fireworks.

A fireworks display operator who has been convicted for a violation of IC 22-11-14 may not be designated as an operator in a permit application within one (1) year after the date of conviction.

(b) A permit issued by the ~~office of the~~ state fire marshal shall not become effective until the chief of the fire department of the municipality in which the display is to be held has ~~done the~~ following:

(1) Approved the operator of the display as qualified. ~~and~~

(2) ~~has~~ Inspected the proposed site of the display to determine that the display will not be hazardous to property or persons.

(c) A person may not possess, transport, or deliver fireworks for a supervised public display unless a permit for that display has been issued by the ~~office of the~~ state fire marshal under this section.

(d) A permit issued under this section is not transferable. (*Fire Prevention and Building Safety Commission; 675 IAC 12-9-5; filed Feb 1, 1988, 2:17 p.m.: 11 IR 1791; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2109; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 69. 675 IAC 12-9-6 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-9-6 Fireworks stand retail sales permits

Authority: IC 22-11-14-7

Affected: IC 22-13; IC 22-14; IC 23-7-1.1

Sec. 6. An applicant for a fireworks stand retail sales permit shall submit an application to the ~~office of the~~ state fire marshal on forms provided by ~~that office: the state fire marshal~~. Each application shall provide the following:

(1) The information required by IC 22-11-14-7. ~~and~~

(2) Evidence of incorporation under IC 23-7-1.1 as a not-for-profit corporation if an exemption from the permit fee is claimed.

(Fire Prevention and Building Safety Commission; 675 IAC 12-9-6; filed Feb 1, 1988, 2:17 p.m.: 11 IR 1791; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 70. 675 IAC 12-9-7 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-9-7 Certificate of compliance; wholesale fireworks

Authority: IC 22-12-6-6

Affected: IC 22-11-14-1; IC 22-11-14-5; IC 22-13-2-11

Sec. 7. (a) An applicant for a certificate of compliance, required by IC 22-11-14-5, for the sale of fireworks shall submit **the following** to the ~~office of the state fire marshal: the~~ following:

- (1) A complete description of each firework item proposed to be shipped into Indiana.
- (2) A written certification that the fireworks are manufactured in accordance with IC 22-11-14-1.
- (3) A statement that:
 - (A) identifies the applicant as:
 - (i) a manufacturer;
 - (ii) a wholesaler;
 - (iii) an importer; or
 - (iv) a distributor; and
 - (B) provides the location to which the shipment of fireworks is to be received within Indiana.

(b) No certificate of compliance shall be issued until the ~~office of the state fire marshal determines~~, after inspection, that there is compliance with IC 22-11-14. *(Fire Prevention and Building Safety Commission; 675 IAC 12-9-7; filed Feb 1, 1988, 2:17 p.m.: 11 IR 1791; filed Jul 15, 1991, 5:30 p.m.: 14 IR 2237; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 71. 675 IAC 12-9-9 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-9-9 Administrative adjudication

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-4; IC 4-21.5-3-7; IC 22-12; IC 22-14

Sec. 9. Any order granting or denying a permit or certificate governed by this rule (~~675 IAC 12-9-9~~) shall be issued by the ~~office of the state fire marshal~~ following the requirements of IC 4-21.5-3-4. If a petition for review is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the commission. *(Fire Prevention and Building Safety Commission; 675 IAC 12-9-9; filed Feb 1, 1988, 2:17 p.m.: 11 IR 1792; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 72. 675 IAC 12-10-8 IS AMENDED TO READ

AS FOLLOWS:

675 IAC 12-10-8 Ordinance approval procedure

Authority: IC 22-13-2-13

Affected: IC 4-21.5-3-4; IC 4-21.5-3-7; IC 22-13-2-5

Sec. 8. The commission's program for review of adopted ordinances of cities, towns, or counties submitted for approval by the commission under ~~IC 22-13-4-5~~, **IC 22-13-2-5** will be conducted ~~at the staff level by the Division of Technical Services and Research (division)~~ **commission staff** as follows:

- (1) A request may be made to the division for preliminary staff review at any time. The results of the staff review will be furnished to the requester within a reasonable time.
- (2) A submission by a political subdivision for approval of an ordinance by the commission:

(A) shall include two (2) copies of an adopted ordinance; and

(B) must be filed with the commission.

The staff will place the submission on the agenda for the first commission meeting scheduled later than five (5) working days subsequent to the receipt of the submission.

(3) The commission's order approving the ordinance shall be issued following the requirements of IC 4-21.5-3-4. If a petition for review is subsequently granted under IC 4-21.5-3-7, that order shall be deemed merely to have been a preliminary determination.

(4) One (1) copy of each approved ordinance, endorsed by the ~~chairman~~ **chairperson** of the commission, shall be returned to the submitter with the order approving the ordinance.

(Fire Prevention and Building Safety Commission; 675 IAC 12-10-8; filed Feb 1, 1988, 2:19 p.m.: 11 IR 1794; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2110; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 73. 675 IAC 12-10-9 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-10-9 Local inspection programs

Authority: IC 22-13-2-13

Affected: IC 22-12-6-6; IC 22-15-2-6; IC 36-1-7-2; IC 36-7-8-7

Sec. 9. (a) A political subdivision that has enacted and put into effect a local building code in accordance with this rule, or has arranged for inspection services to be performed by another political subdivision under IC 36-7-8-7 or IC 36-1-7-2, shall be deemed to have established a program to periodically inspect construction provided a written statement from the chief executive officer of the political subdivision furnishing inspection services is filed with the ~~office of the state building commissioner~~ **division** containing the following:

(1) The name and address of the person or office to which design releases and other notices or orders of the ~~office of the state building commissioner~~ **division** should be sent.

(2) The:

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(A) names of all inspectors appointed to enforce the local building code; and ~~the~~

(B) assigned scope of each inspector's responsibility for the adopted building rules of the commission.

(3) If applicable, the name of other political subdivisions for which inspection services are being provided.

(b) Any changes in the factual content of the written statement required in subsection (a) shall be submitted to the ~~office of the state building commissioner~~ **division** within thirty (30) days of the date of change.

(c) If the ~~office of the state building commissioner~~ **division** determines that the requirements of this section are no longer being met by a political subdivision, the ~~commissioner~~ **building law compliance officer or the state fire marshal** shall give written notice of the determination to the chief executive officer of that political subdivision. The construction inspection fee established in 675 IAC 12-3-6 shall become payable for design releases issued after the date of ~~such~~ **the** notice. (*Fire Prevention and Building Safety Commission; 675 IAC 12-10-9; filed Feb 1, 1988, 2:18 p.m.: 11 IR 1795, eff Apr 1, 1988; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2111; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 74. 675 IAC 12-11-1 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-11-1 Definitions

Authority: IC 22-12-6-3

Affected: IC 10-19-2; IC 10-19-7; IC 22-12-6-3; IC 22-12-6-6

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

(a) ~~As used in this rule;~~ (b) "Approved building department" means the building regulatory agency of a political subdivision that meets the local inspection program requirements of 675 IAC 12-10-9.

(b) ~~As used in this rule;~~ (c) "Building official" means the local government official who administers a local building department education plan.

(c) ~~As used in this rule;~~ (d) "Department" means the ~~fire and building services~~ department of **homeland security** established by ~~IC 22-12-5-1; IC 10-19-2.~~

(d) ~~As used in this rule;~~ (e) "Division" means the division of **education fire and information building safety** established by ~~IC 22-12-5-1(5); IC 10-19-7.~~

(e) ~~As used in this rule;~~ (f) "Fire official" means the local government official who administers a fire **code enforcement** or prevention program.

(f) ~~As used in this rule;~~ (g) "Fund" means the statewide fire and building safety education fund established by IC 22-12-6-3.

(g) ~~As used in this rule;~~ (h) "Inspector" means a person employed by **the division** or a local government to perform inspections to obtain compliance with the rules of the commission.

(h) As used in this rule, "provider" means a person or organization that provides a course or program ~~within the scope of the division's educational and training programs as authorized under IC 22-12-5-6;~~ **to educate inspectors concerning the current rules of the commission. The content of the course or program shall be approved by the division.** (*Fire Prevention and Building Safety Commission; 675 IAC 12-11-1; filed Feb 1, 1990, 5:00 p.m.: 13 IR 1048, eff Mar 1, 1990 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #89-115 was filed Feb 1, 1990.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 75. 675 IAC 12-11-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-11-2 Purpose

Authority: IC 22-12-6-3

Affected: IC 22-12-6-6

Sec. 2. (a) The fund is established to pay all or part of the enrollment fees charged for educational training courses, seminars, or other programs of the department on behalf of **state or** local government inspectors whose applications for financial assistance are approved.

(b) Enrollment fees may include the following:

- (1) Tuition or course fees.
- (2) Registration fees.
- (3) Lab fees.
- (4) Cost of individual course materials, such as books or equipment.
- (5) A pro rata share of instructor honoraria, if applicable.

(c) Enrollment fees may not include the following:

- (1) Inspector travel expenses.
- (2) Lodging costs.
- (3) Cost of meals.
- (4) Parking fees.

(*Fire Prevention and Building Safety Commission; 675 IAC 12-11-2; filed Feb 1, 1990, 5:00 p.m.: 13 IR 1049, eff Mar 1, 1990 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #89-115 was filed Feb 1, 1990.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2111; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 76. 675 IAC 12-11-3 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-11-3 Eligibility for assistance

Authority: IC 22-12-6-3
Affected: IC 22-12-6-6

Sec. 3. (a) The eligibility requirements to qualify for payment of enrollment fees from the fund are as follows:

- (1) The applicant is **any of the following**:
 - (A) A ~~full-~~ **full-time** or part-time:
 - (i) inspector in an approved building department; or ~~is a full- or part-time~~
 - (ii) paid or volunteer fire inspector in an established fire department of a political subdivision.
 - (B) **A full-time employee of the division.**
- (2) The applicant has obtained approval from:
 - (A) a building or fire official;
 - (B) **the state fire marshal; or**
 - (C) **the building law compliance officer;**
 as appropriate, including a statement, **where applicable**, that completion of a specified course or program of the department is an element of a local building or fire department education plan on file with the division, **as appropriate**.

(b) Meeting the eligibility requirements of itself does not assure that an application for assistance will be approved. The fund may not be adequate to finance all applications for specific programs. ~~within an annual budget.~~ *(Fire Prevention and Building Safety Commission; 675 IAC 12-11-3; filed Feb 1, 1990, 5:00 p.m.: 13 IR 1049, eff Mar 1, 1990 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #89-115 was filed Feb 1, 1990.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 77. 675 IAC 12-11-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-11-4 Application for financial assistance

Authority: IC 22-12-6-3
Affected: IC 4-21.5-3-4; IC 4-21.5-3-7; IC 22-12-6-6

Sec. 4. (a) Applications for payment of enrollment fees may be made by eligible inspectors on forms provided by the division.

(b) Applications must be received by the ~~division~~ **department** on or before the submission date printed on the application form.

(c) The ~~division director~~ **department** shall evaluate all applications for completeness, timeliness, and conformance with published instructions. Each application shall be further evaluated ~~by the division director~~ with consideration of the local building or fire department education plan. ~~The director may rank the Applications may be ranked~~ in order of:

- (1) perceived need;
- (2) merit;
- (3) benefit to the local community;
- (4) amount of previous assistance; or
- (5) other factors;

deemed to produce a distribution of available funds for the greatest good. ~~The director may seek impartial assistance in the evaluation process from other departmental employees.~~

(d) The ~~division director~~ **department** shall maintain a list of **the following**:

- (1) Applicants selected for payment of enrollment fees.
- (2) The amount of each payment. ~~and~~
- (3) The name of the provider to whom payment is to be made.

(e) The order granting or denying an application for financial assistance shall be issued ~~by the director of the division~~ following the requirements of IC 4-21.5-3-4. If a petition for review is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the commission. *(Fire Prevention and Building Safety Commission; 675 IAC 12-11-4; filed Feb 1, 1990, 5:00 p.m.: 13 IR 1049, eff Mar 1, 1990 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #89-115 was filed Feb 1, 1990.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 78. 675 IAC 12-11-5 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-11-5 Revocation of financial assistance

Authority: IC 22-12-6-3
Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 22-12-6-6

Sec. 5. (a) The ~~division director~~ **department** may withhold all or part of any payment from the fund on behalf of any inspector who fails to meet the attendance standards of the provider for a particular course or program.

(b) The order revoking an authorization for payment shall be issued under the requirements of IC 4-21.5-3-6. If the petition for review is subsequently granted under IC 4-21.5-3-7, the resulting administrative proceeding shall be conducted by the commission. *(Fire Prevention and Building Safety Commission; 675 IAC 12-11-5; filed Feb 1, 1990, 5:00 p.m.: 13 IR 1050, eff Mar 1, 1990 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #89-115 was filed Feb 1, 1990.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 79. 675 IAC 12-11-6 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-11-6 Local building or fire department education plan

Authority: IC 22-12-6-3
Affected: IC 22-12-6-6

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Sec. 6. ~~(a)~~ Each approved building department or fire department that desires to enroll inspectors with financial assistance from the fund must have on file with the ~~division director department~~ an education plan. The plan should identify all eligible inspectors and their:

- (1) duties; ~~record~~
- (2) records of prior training; and
- (3) educational ~~background~~; **backgrounds**;

and other information that the building or fire official deems appropriate.

~~(b) The division director may provide assistance to local officials in preparation of local education plans. (Fire Prevention and Building Safety Commission; 675 IAC 12-11-6; filed Feb 1, 1990, 5:00 p.m.: 13 IR 1050, eff Mar 1, 1990 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #89-115 was filed Feb 1, 1990.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)~~

SECTION 80. 675 IAC 12-11-8 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-11-8 Reports

Authority: IC 22-12-6-3
Affected: IC 22-12-6-6

Sec. 8. ~~(a)~~ The ~~division director~~ shall prepare An annual report **shall be prepared** at the end of each fiscal year covering the following:

- (1) Curricula.
- (2) Enrollment statistics.
- (3) Summary of student evaluations.
- (4) Programmed and actual expenditures.
- (5) Recommendations for program changes.

~~(b) The executive director of the department shall submit the annual report to the fire prevention and building safety commission with recommendations for changes in administrative rules or level of funding under 675 IAC 12-3-7. (Fire Prevention and Building Safety Commission; 675 IAC 12-11-8; filed Feb 1, 1990, 5:00 p.m.: 13 IR 1050, eff Mar 1, 1990 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #89-115 was filed Feb 1, 1990.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)~~

SECTION 81. 675 IAC 12-11-9 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-11-9 Records

Authority: IC 22-12-6-3
Affected: IC 22-12-6-6

Sec. 9. (a) The ~~division director~~ **department** shall maintain a record of all receipts and expenditures of the fund.

(b) The ~~division director~~ **department** shall maintain performance and attendance records of inspectors enrolled in departmental programs that may be used in any voluntary accreditation program of the ~~division department~~ or a provider.

~~(c) The division director shall send an attendance or performance report to the building or fire official of each political subdivision that has enrolled inspectors under the program. (Fire Prevention and Building Safety Commission; 675 IAC 12-11-9; filed Feb 1, 1990, 5:00 p.m.: 13 IR 1050, eff Mar 1, 1990 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #89-115 was filed Feb 1, 1990.]; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)~~

SECTION 82. 675 IAC 12-12-1 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-12-1 Authority; definitions

Authority: IC 13-23-3-1; IC 13-23-3-2; IC 13-23-3-3; IC 13-23-3-4
Affected: IC 13-11-2-241; IC 13-23-3

Sec. 1. (a) This section is adopted in accordance with IC 13-23-3-1 through IC 13-23-3-4.

(b) The following definitions apply throughout this rule:

(1) "Examination" means a written set of questions approved by the ~~office of the state fire marshal~~ **division**.

(2) "Decommissioning" means the removal or closure of an underground storage tank.

(3) "Owner" has the ~~same~~ meaning as set forth in 675 IAC 22.

(4) "Performance bond" means a document that establishes a guaranty obligation in a stated dollar amount to pay the costs of the:

- (A) installation;
- (B) retrofitting;
- (C) testing;
- (D) cathodic protection; or
- (E) decommissioning;

of one (1) or more underground storage tanks.

(5) "Person" has the ~~same~~ meaning as set forth in 675 IAC 22.

(6) "Underground storage tank" has the ~~same~~ meaning as set forth in IC 13-11-2-241.

(Fire Prevention and Building Safety Commission; 675 IAC 12-12-1; filed Sep 13, 1990, 4:00 p.m.: 14 IR 286; filed Jan 24, 1992, 11:45 a.m.: 15 IR 1006; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2111; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 83. 675 IAC 12-12-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-12-2 Purpose

Authority: IC 13-23-3-1; IC 13-23-3-2; IC 13-23-3-3; IC 13-23-3-4
Affected: IC 13-23-3

Sec. 2. The purpose of this rule is to establish procedures for the ~~office of the state fire marshal division~~ to administer a certification program for persons who supervise, manage, or direct underground storage tank:

- (1) installation or retrofitting;
- (2) testing;
- (3) cathodic protection procedures; or
- (4) decommissioning.

(Fire Prevention and Building Safety Commission; 675 IAC 12-12-2; filed Sep 13, 1990, 4:00 p.m.: 14 IR 286; filed Jan 24, 1992, 11:45 a.m.: 15 IR 1007; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2111; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 84. 675 IAC 12-12-3 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-12-3 Application for certification

Authority: IC 13-23-3-1; IC 13-23-3-2; IC 13-23-3-3; IC 13-23-3-4

Affected: IC 13-23-3

Sec. 3. (a) A person who supervises, manages, or directs the installation, retrofitting, testing, cathodic protection, or decommissioning of underground storage tanks shall submit evidence to the ~~office of the state fire marshal division~~ that the person has successfully completed applicable examinations administered by **either of the following**:

- (1) The International Fire Code Institute. ~~or~~
- (2) Another independent testing agency whose examinations have been approved by the ~~office of the state fire marshal~~ as being substantially similar.

(b) Renewal procedures pertaining to the certification examinations shall be as set forth in IC 13-23-3-4(a). A certificate expires two (2) years from the date a person successfully completes the examination referenced in subsection (a).

(c) Passing scores and retest requirements for the certification examinations shall be as set forth in section 3.1 of this rule.

(d) Examination subjects are those as set forth in section 2 of this rule. *(Fire Prevention and Building Safety Commission; 675 IAC 12-12-3; filed Sep 13, 1990, 4:00 p.m.: 14 IR 286; filed Jan 24, 1992, 11:45 a.m.: 15 IR 1007; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2112; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1009; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 85. 675 IAC 12-12-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-12-4 Issuance of certificate

Authority: IC 13-23-3-1; IC 13-23-3-2; IC 13-23-3-3; IC 13-23-3-4

Affected: IC 13-23-3

Sec. 4. (a) Unless grounds exist to deny a certificate under IC 13-23-3-3(b), ~~the office of the state fire marshal~~ shall issue a certificate to a person who **does the following**:

- (1) Passes one (1) or more of the certification examination

subjects under section 2 of this rule. ~~and~~

(2) Pays a certificate issuance fee of twenty-five dollars (\$25) payable to the fire and building services fund.

(b) A person who had a certificate revoked under IC 13-23-3-3(b) may obtain a certificate from the ~~office of the state fire marshal~~ only if the person files a performance bond in an amount prescribed in section 6 of this rule.

(c) A certificate:

(1) shall identify which certification examination subjects were passed; and

(2) is valid only for work within the scope of those subjects.

(d) A certificate issued under subsection (a) expires two (2) years from the date the person successfully completes the examination to qualify to obtain a certificate.

(e) Upon payment of the required fee, as specified in subsection (a), any person who is certified or licensed to supervise, manage, or direct underground storage tank installation, retrofitting, testing, cathodic protection, or decommissioning in another state shall, without examination, be granted a certificate, provided the following:

(1) The person submits an application for reciprocity.

(2) No such person shall be granted a certificate in a category the person is not certified for in another state.

(3) The requirements for licensing in ~~such the~~ other state are substantially similar to the requirements in force in Indiana.

(f) The ~~division of education and information department~~ shall submit to the ~~office of the state fire marshal~~ documented evidence that the certification or licensing is substantially similar to Indiana's underground storage tank certification examination. The ~~office of the state fire marshal~~ shall grant or deny the certification. Application forms for reciprocity shall be provided by the ~~office of the state fire marshal division~~. *(Fire Prevention and Building Safety Commission; 675 IAC 12-12-4; filed Sep 13, 1990, 4:00 p.m.: 14 IR 286; filed Jan 24, 1992, 11:45 a.m.: 15 IR 1008; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2112; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 86. 675 IAC 12-12-5 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-12-5 Orders; sanctions; appeals

Authority: IC 13-23-3-1; IC 13-23-3-2; IC 13-23-3-3; IC 13-23-3-4

Affected: IC 4-21.5-3-7; IC 22-12-7

Sec. 5. (a) The ~~office of the state fire marshal~~ may issue orders under IC 22-12-7-4 to require a person to cease and correct any violation of the laws and rules pertaining to the:

(1) installation;

(2) retrofitting;

(3) testing;

(4) cathodic protection; or

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(5) decommissioning;
of underground storage tanks.

(b) The ~~office of the~~ state fire marshal may impose sanctions, with respect to certificates issued under section 4 of this rule, as described in IC 22-12-7-7 and IC 13-23-3-3.

(c) A person who is aggrieved by an order of the ~~office of the~~ state fire marshal may **do either of the following**:

- (1) Request an informal hearing under IC 22-12-7-12. ~~or may~~
- (2) Appeal by filing a petition for review of the order under IC 4-21.5-3-7.

(Fire Prevention and Building Safety Commission; 675 IAC 12-12-5; filed Sep 13, 1990, 4:00 p.m.: 14 IR 287; filed Jan 24, 1992, 11:45 a.m.: 15 IR 1008; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2113; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 87. 675 IAC 12-12-6 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-12-6 Performance bond

Authority: IC 13-23-3-1; IC 13-23-3-2; IC 13-23-3-3; IC 13-23-3-4
Affected: IC 13-23-3-3

Sec. 6. If a person files a performance bond with an application for a certificate under IC 13-23-3-3(c), the amount of the bond shall be equal to the dollar value of a single contract awarded to the person for the installation, retrofitting, testing, cathodic protection, or decommissioning of one (1) or more underground storage tanks at a particular location. The ~~office of the state fire marshal division~~ shall:

- (1) act only as a custodian; and ~~shall~~
- (2) not be obligee of the bond.

(Fire Prevention and Building Safety Commission; 675 IAC 12-12-6; filed Sep 13, 1990, 4:00 p.m.: 14 IR 287; filed Jan 24, 1992, 11:45 a.m.: 15 IR 1009; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2113; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 88. 675 IAC 12-12-7 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-12-7 Display of certificate

Authority: IC 13-23-3-1; IC 13-23-3-2; IC 13-23-3-3; IC 13-23-3-4
Affected: IC 13-23-3

Sec. 7. The person who supervises, manages, or directs the:

- (1) installation;
- (2) retrofitting;
- (3) testing;
- (4) cathodic protection; or
- (5) decommissioning;

of an underground storage tank shall display or produce a valid certificate or copy thereof ~~which that~~ was issued by the ~~office of the~~ state fire marshal under this rule. *(Fire Prevention and Building Safety Commission; 675 IAC 12-12-7; filed Sep 13, 1990, 4:00 p.m.: 14 IR 287; filed Jan 24, 1992, 11:45 a.m.: 15 IR 1009; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2114; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 89. 675 IAC 12-13-2 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-13-2 Application

Authority: IC 22-13-4-5

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 2. (a) This rule applies to existing buildings, when specifically requested by the building owner or his or her agent, at the time of an application for a design release under 675 IAC 12-6. Upon receipt of ~~such a~~ request, the ~~offices of the state building commissioner and the state fire marshal division~~ shall have the plans, if any, and an inspection report for conversion reviewed for conformance with the requirements of this rule. If conformance is achieved, a design release for the conversion shall be issued. Full compliance with all applicable rules of the commission shall be required for all construction work done to accomplish the conversion.

(b) An application and supporting documents for a design release under this rule must demonstrate all of the following:

- (1) The total building floor area, excluding basements, does not exceed three thousand (3,000) square feet.
- (2) The building does not exceed three (3) stories in height, excluding basements.
- (3) Basements and third floor areas shall not be used by the public.
- (4) The building occupant load shall not exceed the number permitted for new construction in the planned use group classification.
- (5) The minimum width of stairways to be used by the public shall be thirty-six (36) inches.
- (6) The restrictions in this rule:

(A) are acceptable; and

(B) shall be conditions of a design release or other order of the ~~office of the state building commissioner; division.~~

(7) The new use group must meet the same requirements for:

(A) exit width;

(B) arrangement of exits;

(C) illumination of exits;

(D) exit signs; and

(E) smoke detection;

as required for new construction.

(8) Buildings converted to ~~use~~ occupancy Group R-1 **or R-2** shall be in full compliance with the plumbing, mechanical, and electrical provisions of the commission's rules for the new use or occupancy.

(Fire Prevention and Building Safety Commission; 675 IAC 12-13-2; filed Jul 23, 1992, 1:00 p.m.: 15 IR 2586, eff Jun 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #92-11 was filed Jul 23, 1992.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2114; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)

SECTION 90. 675 IAC 12-13-3 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-13-3 Permitted conversions

Authority: IC 22-13-4-5

Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15

Sec. 3. (a) A detached single family dwelling may be converted to use group B, F-1, M, S-1, or S-2 as **one (1) of the following:**

- (1) Office **or** factory use with no floor loads in excess of thirty (30) pounds per square foot.
- (2) Retail sales use with storage areas limited to floor loads not in excess of thirty (30) pounds per square foot. **or**
- (3) other storage uses with no floor loads in excess of thirty (30) pounds per square foot.

(b) A detached single family dwelling may be converted to use group A-3 having:

- (1) an occupant load of one hundred (100) or less, **based on an occupant load factor not to exceed fifteen (15)**, limited to the first floor level; and **having**
- (2) two (2) exits **directly** to a public way.

Floor loads shall not exceed thirty (30) pounds per square foot.

(c) A group B, F-1, M, S-1, or S-2 building may be converted to ~~(1) use group S-3; or~~
~~(2) use group A-3 having:~~

- (1) an occupancy load of one hundred (100) or less, **based on an occupant load factor not to exceed fifteen (15)**; and **having**
- (2) two (2) exits **directly** to a public way.

(d) A detached one (1) or two (2) family dwelling may be converted to ~~a use an occupancy group R-1 apartment building or use group R-3 lodging house; or R-2.~~

(e) A detached single family dwelling may be converted to a mixed use group ~~M/R or B/R~~. **M/one or two family dwelling or B/one or two family dwelling.** *(Fire Prevention and Building Safety Commission; 675 IAC 12-13-3; filed Jul 23, 1992, 1:00 p.m.: 15 IR 2587, eff Jun 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #92-11 was filed Jul 23, 1992.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2114; filed Nov 20, 2000, 3:25 p.m.: 24 IR 1009; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 91. 675 IAC 12-13-4 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-13-4 Inspection

Authority: IC 22-13-4-5

Affected: IC 22-14; IC 22-15

Sec. 4. (a) ~~Prior to~~ **Before** issuance of a design release for conversion of a building under this rule, the ~~state building commissioner division~~ shall cause the building to be inspected with regard to the existing condition and proposed construction or alterations work. The ~~same~~ inspection fee established in 675

IAC 12-3-11 for inspections under 675 IAC 12-8-3(a) is established for inspections under this rule. The inspection fee shall be paid to the fire and building services fund **prior to before** any inspection.

(b) Inspection of work in progress shall be performed by local units of government that require conformance with the building rules of the commission. The ~~office of the state building commissioner division~~ may also perform inspections for the same purpose. *(Fire Prevention and Building Safety Commission; 675 IAC 12-13-4; filed Jul 23, 1992, 1:00 p.m.: 15 IR 2587, eff Jun 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the Secretary of State. LSA Document #92-11 was filed Jul 23, 1992.]; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2114; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530)*

SECTION 92. 675 IAC 12-14-1 IS AMENDED TO READ AS FOLLOWS:

675 IAC 12-14-1 Definitions

Authority: IC 22-13-2-2; IC 22-14-5

Affected: IC 22-12-1-18.7; IC 22-12-1-23.3; IC 36-8-12-2

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

(b) "Office" means **either of the office of following:**

- (1) The state fire marshal.
- (2) **Employees of the state fire marshal.**

(c) "Personal protective equipment" means any of the following:

- (1) Protective:
 - (A) coats;
 - (B) trousers;
 - (C) coveralls;
 - (D) footwear;
 - (E) gloves; and
 - (F) hoods.
- (2) Proximity protective:
 - (A) coats;
 - (B) trousers;
 - (C) coveralls;
 - (D) footwear;
 - (E) gloves; and
 - (F) hoods.
- (3) Emergency medical:
 - (A) garments;
 - (B) face protection devices; and
 - (C) gloves.
- (4) Helmets.
- (5) Self-contained breathing apparatus.
- (6) Vapor protective suits.
- (7) Liquid splash-protective suits.
- (8) Chemical-protective clothing.

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(d) “Qualified entity” ~~means~~ **has the term as defined meaning set forth** in IC 22-12-1-18.7.

(e) “Revolving fund” means the firefighting and emergency equipment revolving loan fund established by IC 22-14-5. (*Fire Prevention and Building Safety Commission; 675 IAC 12-14-1; filed May 29, 1997, 2:40 p.m.: 21 IR 395; readopted filed Sep 11, 2001, 2:49 p.m.: 25 IR 530*)

SECTION 93. 675 IAC 12-11-7 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 17, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 19, Indianapolis, Indiana; AND on May 3, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Fire Prevention and Building Safety Commission will hold a public hearing on proposed amendments to 675 IAC 12.

The Fire Prevention and Building Safety Commission has the authority to adopt the proposed amendments under IC 22-13-2. The amendments will update the General Administrative rules and will not result in any 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 W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David L. Hannum
Chairman
Fire Prevention and Building Safety Commission

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Proposed Rule

LSA Document #05-127

DIGEST

Amends 675 IAC 22-2.3 to address the use of tents, canopies, and other membrane structures. Effective 30 days after filing with the Secretary of State.

675 IAC 22-2.3-227.1	675 IAC 22-2.3-232.6
675 IAC 22-2.3-228.1	675 IAC 22-2.3-233.1
675 IAC 22-2.3-232.1	675 IAC 22-2.3-233.2
675 IAC 22-2.3-232.2	675 IAC 22-2.3-237.1
675 IAC 22-2.3-232.3	675 IAC 22-2.3-237.2
675 IAC 22-2.3-232.4	675 IAC 22-2.3-237.3
675 IAC 22-2.3-232.5	675 IAC 22-2.3-237.4

SECTION 1. 675 IAC 22-2.3-227.1 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-227.1 Section 2401.1; scope

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 227.1. Section 2401.1 is amended to read as follows: Except as otherwise provided in Sections 2406.6, 2411.5, and 2411.6, tents and membrane structures having an area in excess of 200 square feet and canopies in excess of 400 square feet shall be in accordance with Chapter 24.

EXCEPTION: Tents and membrane structures used exclusively for recreational camping purposes.

(*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-227.1*)

SECTION 2. 675 IAC 22-2.3-228.1 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-228.1 Section 2401.3; place of assembly

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 228.1. Section 2401.3 is amended to read as follows: For purposes of this chapter, a place of assembly shall include a circus, carnival, tent show, theatre, skating rink, dance hall, or other place of assembly in or under which persons gather for any purpose. A tent, canopy, temporary membrane structure, air-supported or air-inflated structure with an occupant load of 50 or more shall be considered a place of assembly. Open or exposed flame equipment shall not be permitted in a place of assembly. (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-228.1*)

SECTION 3. 675 IAC 22-2.3-232.1 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-232.1 Section 2402.1; definitions

Authority: IC 22-13-2-2; IC 22-13-2-13

Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 232.1. Section 2402.1 is amended to add the following definitions:

COMMERCIAL FOOD HEAT PROCESSING APPLIANCES. See the 2003 Indiana Mechanical Code (675 IAC 18-1.4).

COOKING. Cooking means to prepare food using processes such as: boiling, roasting, baking, broiling, and frying by a method of exposure to flame or heat that prepares food suitable for consumption.

OPEN OR EXPOSED FLAME EQUIPMENT. Open or exposed flame equipment means equipment with flame that is visible during the ordinary use of the equipment or device.

(*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-232.1*)

SECTION 4. 675 IAC 22-2.3-232.2 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-232.2 Section 2403.1; access

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 232.2. Section 2403.1 is amended to read as follows: Fire apparatus access roads shall be provided in accordance with Section 503 and shall extend to within 150 feet of all portions of the structure. (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-232.2*)

SECTION 5. 675 IAC 22-2.3-232.3 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-232.3 Section 2403.2; location

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 232.3. Section 2403.2 is amended to read as follows: Temporary membrane structures, tents, canopies, air-supported, air-inflated structures shall not be located within 20 feet of lot lines, buildings, other temporary membrane structures, other tents and canopies, parked vehicles, or internal combustion engines. For purposes of determining required distances, support ropes and guy wires shall be considered as part of the temporary membrane structure, tent, or canopy.

EXCEPTIONS: 1. Separation distance between temporary membrane structures, tents, and canopies, in which open or exposed flame equipment is not used, is not required when the aggregate floor area does not exceed 15,000 square feet.

2. Temporary membrane structures, tents, and canopies need not be separated from buildings when all of the following conditions are met:

2.1 The aggregate floor area of the temporary membrane structure, tent, or canopy shall not exceed 10,000 square feet.

2.2 The aggregate floor area of the building, temporary membrane structure, tent, or canopy shall not exceed the allowable floor area including increases in the Indiana Building Code.

2.3 All required exiting provisions for the building and the temporary membrane structure, tent, or canopy, including travel distance.

2.4 Fire apparatus access roads are provided in accordance with Section 503.

(*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-232.3*)

SECTION 6. 675 IAC 22-2.3-232.4 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-232.4 Section 2403.3; location of structures in excess of 15,000 square feet

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 232.4. Section 2403.3 is amended to read as follows: Tents, air-supported, air-inflated, or tensioned membrane structures having a single structure area of 15,000 square feet or more shall be located not less than 50 feet from other tents or structures as measured from the side wall of the tent unless joined by a corridor. (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-232.4*)

SECTION 7. 675 IAC 22-2.3-232.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-232.5 Section 2403.4; connecting corridors

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 232.5. Section 2403.4 is amended to read as follows: Tents, air-supported, air-inflated, or tensioned membrane structures having a single structure area of 15,000 square feet or more are allowed to be joined by means of a corridor. Exits shall be provided at each end of such corridor. On each side of such corridor and approximately opposite each other, there shall be provided openings not less than 12 feet wide. (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-232.5*)

SECTION 8. 675 IAC 22-2.3-232.6 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-232.6 Section 2403.5; fire break

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 232.6. Section 2403.5 is amended to read as follows: Temporary membrane structures, tents, canopies, air-inflated and air-supported structures where the aggregate floor area is 15,000 square feet or greater shall have an unobstructed fire break passageway or fire road not less than 12 feet wide and free from guy ropes or other obstructions and shall be maintained on all sides of all tents, air-supported, air-inflated, or tensioned membrane structure. (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-232.6*)

SECTION 9. 675 IAC 22-2.3-233.1 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-233.1 Section 2406.3; certification

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 233.1. Section 2406.3 is deleted in its entirety without substitution. (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-233.1*)

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SECTION 10. 675 IAC 22-2.3-233.2 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-233.2 Section 2406.6; open or exposed flame

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 233.2. Section 2406.6 is amended to read as follows: **Open or exposed flame equipment.** Open or exposed flame equipment emitting flame that is visible during the ordinary use of the equipment shall be permitted in temporary membrane structures or tents having an aggregate area less than 200 square feet and canopies having an aggregate area less than 400 square feet. All temporary membrane structures, tents, canopies, air-inflated, air-supported, tensioned membrane structures, buildings, parked vehicles, or internal combustion engines shall not be located within 10 feet. (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-233.2*)

SECTION 11. 675 IAC 22-2.3-237.1 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-237.1 Section 2411.5; cooking tents

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 237.1. Section 2411.5 is amended to read as follows: (1) Temporary membrane structures, tents, and canopies where open or exposed flame equipment is used for cooking shall comply with Section 2406.6.

(2) Temporary membrane structures, tents, and canopies where open or exposed flame cooking is performed shall be separated from other temporary membrane structures, tents, canopies, air-inflated, air-supported, and tensioned membrane structures, buildings, parked vehicles, or internal combustion engines by a minimum distance of 10 feet.

(3) Cooking that produces grease-laden vapors is permitted in temporary membrane structures, tents, or canopies when commercial food heat-processing appliances are used that are listed and installed in accordance with Sections 2411.1 and 2411.2.

(4) When open or exposed flame cooking equipment, other than commercial food heat-processing appliances, is used, surfaces subject to oil or grease deposits shall be cleaned at intervals frequently enough to prevent oil or grease deposits from exceeding a thickness of twenty-five thousandths (0.025) inch.

(5) Cooking that does not use open or exposed flame cooking equipment may be performed in tents, canopies, and temporary membrane structures that comply with Section 2406.1.

(*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-237.1*)

SECTION 12. 675 IAC 22-2.3-237.2 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-237.2 Section 2411.6; outdoor cooking tents

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 237.2. Section 2411.6 is amended to read as follows: **Outdoor cooking that produces sparks shall not be performed within 10 feet of a temporary membrane structure, tent, canopy, air-inflated, air-supported, or tensioned membrane structure.** (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-237.2*)

SECTION 13. 675 IAC 22-2.3-237.3 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-237.3 Section 2412.2.1; containers 500 gallons or less

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 237.3. Section 2412.2.1 is amended to read as follows: **Portable LP-gas containers of 500 gallons or less capacity shall have a minimum separation between the container and any fuel-operated device, including, without limitation, LP-gas, gasoline, electric, wood, coal, or charcoal-fueled equipment of not less than 10 feet, but in no event shall the container be located within or under the tent, canopy, or temporary membrane structure.** (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-237.3*)

SECTION 14. 675 IAC 22-2.3-237.4 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-237.4 Section 2412.2.2; containers more than 500 gallons

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14

Sec. 237.4. Section 2412.2.2 is deleted in its entirety without substitution. (*Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-237.4*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 17, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 19, Indianapolis, Indiana; AND on May 3, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Fire Prevention and Building Safety Commission will hold a public hearing on proposed new rules concerning the 2003 Indiana Fire Code.

The Fire Prevention and Building Safety Commission has the

authority to adopt the proposed amendments under IC 22-13-2. The amendments will simplify and clarify the regulations affecting the use of tents, canopies, and temporary membrane structures and will 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 W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David L. Hannum
Chairman
Fire Prevention and Building Safety Commission

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule LSA Document #05-133 DIGEST

Amends 760 IAC 1-6.2-1 through 760 IAC 1-6.2-10 and adds 760 IAC 1-6.2-1.5 and 760 IAC 1-6.2-11 through 760 IAC 1-6.2-14 to set standards for prelicensing and continuing education for bail agents and recovery agents and to otherwise implement IC 27-10-3. 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:

Pursuant to IC 27-10-3-5 and IC 27-10-3-7, bail agents and recovery agents are required to take a prelicensing course and continuing education courses. The Department of Insurance is directed to set curriculum requirements and review proposed course. IC 27-10-3-7.1(a)(2) directs a reasonable fee to be paid to the commissioner for the review of these courses. The Department has set the filing fee at \$40 for courses and \$20 for instructors. The Department believes this is a reasonable cost in light of the time that will be involved in reviewing applications. The fees are deposited into a dedicated fund used to fund the expenses of administering the licensing, auditing, and enforcement of bail and recovery agents. The Department expects that instructors and course providers may be small businesses. As we do not know who may submit courses and/or instructors, it is unknown how many small businesses this rule will affect.

Estimated Average Annual Administrative Costs that Small Businesses will Incur:

The proposed rule requires an annual filing fee of \$40 for courses and \$20 for instructors. The Department expects for a course provider to have one course for bail agents and perhaps a second course for recovery agents. Each course would have an instructor. If all are submitted by the same small business then the annual administrative costs would be \$100.

Estimated Total Annual Economic Impact on Small Businesses:

The proposed rule requires an annual filing fee of \$40 for courses and \$20 for instructors. The Department expects for a course provider to have one course for bail agents and perhaps a second course for recovery agents. Each course would have an instructor. If all are submitted by the same small business then the annual administrative costs would be \$100.

Regulatory Flexibility Analysis of Alternative Methods:

The Department is directed by statute to set forth procedures to approve courses and set an annual reasonable fee. This rule contains standards and sets the annual fee at \$40 for courses and \$20 for instructors. The Department reviewed the fees due for insurance producer courses and instructors. The final decision on fees was based upon the amount of time it will take to review and record the courses and instructors.

760 IAC 1-6.2-1	760 IAC 1-6.2-8
760 IAC 1-6.2-1.5	760 IAC 1-6.2-9
760 IAC 1-6.2-2	760 IAC 1-6.2-10
760 IAC 1-6.2-3	760 IAC 1-6.2-11
760 IAC 1-6.2-4	760 IAC 1-6.2-12
760 IAC 1-6.2-5	760 IAC 1-6.2-13
760 IAC 1-6.2-6	760 IAC 1-6.2-14
760 IAC 1-6.2-7	

SECTION 1. 760 IAC 1-6.2-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-1 Authority

Authority: IC 27-10-2-1
Affected: IC 27-10-3-21

Sec. 1. This rule is adopted and promulgated by the department of insurance under IC 27-10-2-1 and IC 27-10-3-21. (Department of Insurance; 760 IAC 1-6.2-1; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 2. 760 IAC 1-6.2-1.5 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-1.5 Definitions

Authority: IC 27-10-2-1
Affected: IC 27-10-1-4; IC 27-10-1-9; IC 27-10-3

Sec. 1.5. The following definitions apply throughout this rule:

- (1) "Bail agent" has the meaning set forth in IC 27-10-1-4.
- (2) "Commissioner" means the commissioner of the department.
- (3) "Continuing education class" means classes available to licensed bail or recovery agents on topics related to the bail industry necessary to renew a license under IC 27-10-3-7(b).
- (4) "Department" means the department of insurance.
- (5) "Prelicensing class" means a classroom course of

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study to prepare an applicant for taking the examination test as required by IC 27-10-3-3(a)(4) and IC 27-10-3-5(4).

(6) “Provider” means a person or entity that offers an approved preclicensing or continuing education class.

(7) “Qualified instructor” means a person who has obtained a high school diploma and also meets one (1) of the following criteria:

(A) Holds a valid teaching license in the state of Indiana.

(B) Has a minimum of two (2) years of managerial, supervisory, or teaching experience in the bail industry.

(C) Holds a property and casualty insurance producer license with the designation of:

(i) CPCU;

(ii) FLMI;

(iii) CIC; or

(iv) CHFC.

A qualified instructor must be compliant with all applicable state laws and 18 U.S.C. 1033 and may not have a bail agent or recovery agent license or insurance producer license that is, or has in the past been, suspended or revoked in Indiana or any other state.

(8) “Recovery agent” has the meaning set forth in IC 27-10-1-9.

(9) “Structured setting” means a class that meets at a:

(A) set time; and

(B) fixed location.

The term does not include on-line or self-study classes. (Department of Insurance; 760 IAC 1-6.2-1.5)

SECTION 3. 760 IAC 1-6.2-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-2 Soliciting business; actions considered

Authority: IC 27-10-2-1

Affected: IC 27-10-3-18; IC 27-10-4-2

Sec. 2. (a) A bail agent or a recovery agent shall be deemed to be soliciting business in violation of the law if the bail agent or recovery agent, while present in any:

(1) jail;

(2) sheriff’s office;

(3) constable’s office;

(3) police station;

(4) courthouse; or

(5) courtroom;

without invitation, speaks with, approaches, or communicates with, in writing or otherwise, any person, with the intent to solicit bail business.

(b) This rule does not prevent a bail agent or a recovery agent from being in and around a:

(1) jail;

(2) sheriff’s office;

(3) constable’s office;

(4) police station;

(5) courthouse; or

(6) courtroom;

when called there by a client or for the purpose of seeing that the defendants on whom the bonds have been written are present. (Department of Insurance; 760 IAC 1-6.2-2; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 4. 760 IAC 1-6.2-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-3 Solicitation on bail agent’s behalf by unlicensed person

Authority: IC 27-10-2-1

Affected: IC 27-10-4-2

Sec. 3. (a) Any licensed bail agent who knowingly permits any person, not licensed as a bail agent, to solicit business ~~in~~ on the agent’s behalf as prohibited by law, shall be deemed to be in violation of the law.

(b) Any person, not licensed as a bail agent, who:

(1) is connected with a bail agent or ~~an authorized~~ a surety company; and ~~who~~

(2) makes unsolicited contact with a defendant ~~prior to~~ before the approval or acceptance of the bond by a proper officer; shall be deemed to be soliciting bail bonds without a license. (Department of Insurance; 760 IAC 1-6.2-3; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 5. 760 IAC 1-6.2-4 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-4 Power of attorney

Authority: IC 27-10-2-1

Affected: IC 27-10-4-5

Sec. 4. Any licensed bail agent acting on behalf of an authorized surety company must attach to each bond a numbered, ~~and~~ **original properly** executed power of attorney from the surety company in an amount of at least the penalty of the bond. (Department of Insurance; 760 IAC 1-6.2-4; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 6. 760 IAC 1-6.2-5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-5 Receipts for receiving and returning collateral

Authority: IC 27-10-2-1

Affected: IC 27-10-2-14

Sec. 5. (a) When a bail agent accepts collateral, the agent shall give a written receipt. The receipt shall **do the following**:

- (1) Identify the bond for which the collateral was received.
- (2) Give a full description of the collateral.
- (3) Name the individual giving the collateral. ~~and~~
- (4) Specify the terms for redemption of the collateral.

(b) When a bail agent returns collateral, the agent shall give a written receipt. The receipt shall **do the following**:

- (1) Identify the bond for which the collateral was received.
- (2) Give a full description of the collateral returned. ~~and~~
- (3) Include the signature of the person to whom the collateral was returned.

(Department of Insurance; 760 IAC 1-6.2-5; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 7. 760 IAC 1-6.2-6 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-6 Manner of conducting business; capacity in which bail agent acts

Authority: IC 27-10-2-1

Affected: IC 27-10-3-8

Sec. 6. Every bail agent **and recovery agent** shall conduct the agent's business in such a manner that the public and those dealing with the agent shall be aware of the capacity in which the agent is acting. **No bail agent or recovery agent shall misrepresent his or her authority.** *(Department of Insurance; 760 IAC 1-6.2-6; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)*

SECTION 8. 760 IAC 1-6.2-7 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-7 Gifts to public officials or prisoners prohibited; gifts to relatives permitted

Authority: IC 27-10-2-1

Affected: IC 27-10-4-2

Sec. 7. No bail agent shall give, directly or indirectly, any gift of any kind to **any of the following**:

- (1) A public official.
- (2) An employee of any government agency. ~~or~~
- (3) A prisoner in any jail or place of detention.

This section shall not prevent the customary giving of gifts to relatives by blood or marriage. *(Department of Insurance; 760 IAC 1-6.2-7; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2863; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)*

SECTION 9. 760 IAC 1-6.2-8 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-8 Records must be kept; information required

Authority: IC 27-10-2-1

Affected: IC 27-10-2-14

Sec. 8. (a) Every bail agent shall keep complete records of all business done under authority of the:

- (1) agent's license; or ~~under the authority of the~~
- (2) license of any bail agent employed by the agent.

All records kept by ~~such the~~ bail agent, including all documents and copies thereof, shall be open to inspection or examination by the commissioner ~~of the department of insurance~~ or his ~~or her~~ representatives at all reasonable times at the principal place of business of the bail agent as designated in the bail agent's license.

(b) ~~Such The~~ records for each bail bond executed shall include, but not be limited to, the following:

- (1) The original application for a bond.
- (2) A copy of the power of attorney used pursuant to the application and issued bond.
- (3) A dated, serially numbered receipt for premium payment evidencing the power of attorney used for the bond, signed by both **of the following**:
 - (A) The paying individual. ~~and~~
 - (B) The receiving bail agent.
- (4) Collateral receipts, if any, issued for each bond.
- (5) Complete accounting records reflecting all premiums received and disbursements.

(Department of Insurance; 760 IAC 1-6.2-8; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2863; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 10. 760 IAC 1-6.2-9 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-9 Acceptance of collateral for bail bond; collateral receipt required

Authority: IC 27-10-2-1

Affected: IC 27-10-2

Sec. 9. Each bail agent who accepts collateral security for a bail bond shall, for ~~such the~~ bail bond written, make and attach to each ~~such~~ bail bond a copy of receipt for ~~such the~~ collateral received. *(Department of Insurance; 760 IAC 1-6.2-9; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2863; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)*

SECTION 11. 760 IAC 1-6.2-10 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-10 Contract between principal and surety; terms and conditions

Authority: IC 27-1-3-7

Affected: IC 27-10-2-3; IC 27-10-4-4

Sec. 10. (a) The terms and conditions of all contracts entered into between a principal and a surety for a bail bond shall set forth **the**:

- (1) ~~the~~ bond number;
- (2) ~~the~~ date;

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(3) ~~the~~ amount of the premium; and
(4) ~~the~~ name of the surety company;
on the form ~~prescribed~~ **approved** by the commissioner. ~~of the department of insurance.~~ A specimen form of ~~such the~~ terms and conditions appears in subsection (b). Any other form may be used upon the approval of the commissioner ~~of the department of insurance which that~~ meets the minimum standards of the specimen form.

(b) The following is an example of the terms and conditions of a contract between a principal and a surety:

TERMS AND CONDITIONS

The following terms and conditions are an integral part of this application for appearance bond # _____ dated _____ for which _____ Surety Company or its agents shall receive a premium in the amount of _____ (\$ _____) Dollars, and the parties agree that said appearance bond is conditioned upon full compliance by the principal with all said terms and conditions and is a part of said bond and application therefor.

1. _____ Surety Company as bail, shall have control and jurisdiction over the principal during the term for which the bond is executed and shall have the right to apprehend, arrest, and surrender the principal to the proper officials at any time as provided by law.

2. It is understood and agreed that the happening of any one of the following events shall constitute a breach of principal's obligations to _____ Surety Company hereunder, and _____ Surety Company shall have the right to forthwith apprehend, arrest, and surrender principal, and principal shall have no right to any refund of premium whatsoever. Said events which shall constitute a breach of principal's obligations hereunder are:

(a) If principal shall depart the jurisdiction of the court without the written consent of the court and _____ Surety Company or its agent.

(b) If principal shall move from one address to another within the State of Indiana without notifying _____ Surety Company or its agent in writing prior to said move.

(c) If principal shall commit any act which shall constitute reasonable evidence of principal's intention to cause a forfeiture of said bond.

(d) If principal shall make any material false statement in the application.

(e) If principal is arrested and incarcerated for any offense other than a minor traffic violation.

Signed, sealed, and delivered this _____ day of _____ +9
20 _____

Signature of Applicant

Mailing Address

Telephone Number

(Department of Insurance; 760 IAC 1-6.2-10; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2863; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 12. 760 IAC 1-6.2-11 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-11 Prelicensing and continuing education classes

Authority: IC 27-10-3-21

Affected: IC 27-10; IC 35

Sec. 11. (a) Prelicensing and continuing education classes must be filed with and approved by the commissioner. Any of the following persons or entities may submit a prelicensing or continuing education class for approval:

- (1) **An individual.**
- (2) **An insurance company.**
- (3) **An insurance or bail trade organization.**
- (4) **An accredited college.**
- (5) **An insurance education association.**

(b) A prelicensing or continuing education class shall include instruction for bail and recovery agents in the following areas:

- (1) **IC 27-10.**
- (2) **This rule.**
- (3) **Practical application of the statutory requirements in the field of bail bonds.**
- (4) **Other provisions of Indiana statutes that affect bail and recovery operation including, but not limited to, IC 35.**
- (5) **Ethics.**
- (6) **Applicable federal laws.**
- (7) **Technological and procedural resources used in bail and recovery operations.**

All classes must be held in a structured setting with a qualified instructor approved by the commissioner under section 12 of this rule.

(c) The application for approval shall include the following information:

- (1) **An outline for the class including the time allocated to each topic.**
- (2) **The class materials that will be used for teaching.**
- (3) **The information that will be submitted to the attendees.**
- (4) **The location where the class will be held.**

(d) The application for approval shall be submitted to the commissioner along with a filing fee in the amount of forty dollars (\$40) per class. The commissioner shall review the proposed class and approve or disapprove the class within ninety (90) days. If the commissioner fails to act, the class

is deemed approved after ninety (90) days. A request for a hearing on any denial must be presented in writing to the commissioner within thirty (30) days after the denial is issued. A class approval is valid for one (1) year. Thereafter, the program or class must be resubmitted for review.

(e) The provider shall issue a certificate of compliance, on the form provided in section 14 of this rule, to each attendee at the end of the class. The certificate of completion shall certify that the applicant:

- (1) has satisfactorily completed the class; and
- (2) was present in a structured setting with an approved instructor for the requisite time period.

The provider of the class shall take attendance, signed by the attendee, at each class. The provider shall retain attendance reports for four (4) years.

(f) The commissioner may, after notice and an opportunity for a hearing, do the following:

(1) Withhold, withdraw, suspend, or revoke the approval of a preclicensing or continuing education class if the commissioner finds any of the following:

(A) The provider or an instructor has made a material misrepresentation on any of the following:

- (i) The application for approval.
- (ii) A certificate of completion.
- (iii) Attendance records.

(B) The provider fails to timely provide certificates of completion.

(C) The provider or an instructor does not display competence in the area of teaching, bail issues, or recovery issues.

(D) The instructor substantially deviates from the approved class materials.

(2) Assess a fine or suspend or revoke a bail or recovery agent license if the commissioner finds that the bail or recovery agent has made a material alteration to a certificate of completion.

(g) The commissioner shall maintain a current list of approved bail agent preclicensing and continuing education providers.

(h) A course has been approved by the Professional Bail Agents of the United States shall be approved by the department. (*Department of Insurance; 760 IAC 1-6.2-11*)

SECTION 13. 760 IAC 1-6.2-12 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-12 Approval of instructor

Authority: IC 27-10-3-21
Affected: IC 27-10; IC 35

Sec. 12. (a) An instructor must be a qualified instructor and approved by the commissioner to teach a preclicensing

or continuing education class. A qualified instructor that has been approved by the commissioner may teach any bail or recovery agent class that has been approved by the commissioner.

(b) A qualified instructor may become approved by submitting an application on a form prescribed by the department.

(c) The application for approval shall be accompanied by an application fee of twenty dollars (\$20).

(d) Approval of an instructor is valid for two (2) years.

(e) The commissioner may, after notice and an opportunity for a hearing, withhold, withdraw, suspend, or revoke the approval of an instructor if the commissioner finds any of the following:

(1) The instructor has made a material misrepresentation on any of the following:

- (A) The application submitted to the commissioner.
- (B) A certificate of completion.
- (C) Attendance records.

(2) The instructor displays incompetence or deviates substantially from the approved class material.

(*Department of Insurance; 760 IAC 1-6.2-12*)

SECTION 14. 760 IAC 1-6.2-13 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-13 Education hour

Authority: IC 27-10-3-21
Affected: IC 27-10; IC 35

Sec. 13. (a) A preclicensing or continuing education hour is based on a one (1) hour block of time. Fifty (50) minutes of instruction in a sixty (60) minute period of time will constitute one (1) credit hour.

(b) Education credit hours will be approved in not less than one-half (½) hour increments.

(c) One (1) education credit hour is the minimum number of hours that will be approved for any preclicensing program or continuing education class. Eight (8) hours of classroom instruction per day is the maximum number of hours that will be approved for any preclicensing program or continuing education class. (*Department of Insurance; 760 IAC 1-6.2-13*)

SECTION 15. 760 IAC 1-6.2-14 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-14 Certificate of completion

Authority: IC 27-10-3-21
Affected: IC 27-10; IC 35

Proposed Rules

Sec. 14. (a) The certificate of completion for a prelicensing class required by section 11 of this rule is as follows:

CERTIFICATE OF COMPLETION	
PRELICENSING	
BAIL BOND OR RECOVERY AGENT LICENSE	
This Certificate must be presented at the examination site and must be accompanied by two (2) forms of identification, one of which must include a photograph. This Certificate is valid for six (6) months after the date issued.	
_____ Name of Student	_____ Date of Birth
_____ Name of School	_____ Address of School
_____ Name of Instructor	_____ City/State Zip Code
Days of Week Class Offered (circle): M T W TH F S S	
Date and Time of Class: _____	
Total number of hours of class instruction received by applicant at the above location and time and in the presence of the above instructor(s) _____	
I hereby certify, under penalty of perjury, that the above information is true and correct to the best of my knowledge and belief and I understand that a false statement is cause for denial, suspension, or revocation of a class approval.	
_____ Date	_____ Instructor's Name (print)
	_____ Instructor's Signature
I hereby certify, under penalty of perjury, that the above information is true and correct to the best of my knowledge and belief, and I understand that a false statement is cause for denial, suspension, or revocation of a bail bond license.	
_____ Date	_____ Applicant's Name
	_____ Applicant's Signature

(b) The certificate of completion for a continuing education class required by section 11 of this rule is as follows:

CERTIFICATE OF COMPLETION CONTINUING EDUCATION BAIL BOND OR RECOVERY AGENT LICENSE										
This Certificate shall be submitted to the Department of Insurance along with the renewal application.										
<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Name of Student				<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Date of Birth						
<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Name of School				<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Address of School						
<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Name of Instructor				<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> City/State Zip Code						
Days of Week Class Offered (circle):				M	T	W	TH	F	S	S
Date and Time of Class: <div style="border-bottom: 1px solid black; width: 80%; display: inline-block;"></div>										
Total number of hours of class instruction received by applicant at the above location and time and in the presence of the above instructor(s): <div style="border-bottom: 1px solid black; width: 80%; display: inline-block;"></div>										
I hereby certify, under penalty of perjury, that the above information is true and correct to the best of my knowledge and belief, and I understand that a false statement is cause for denial, suspension, or revocation of a class approval.										
<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Date				<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Instructor's Name (print)						
				<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Instructor's Signature						
I hereby certify, under penalty of perjury, that the above information is true and correct to the best of my knowledge and belief, and I understand that a false statement is cause for denial, suspension, or revocation of a bail bond license.										
<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Date				<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Agent's Name (print)						
				<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> Agent's Signature						

(Department of Insurance; 760 IAC 1-6.2-14)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 1, 2006 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on a proposed rule to set standards for prelicensing and continuing education for bail agents and recovery agents and to otherwise implement IC 27-10-3.

The Department is directed by statute to establish standards and an approval process for prelicensing and continuing education classes for bail and recovery agents. The proposed rule affects small employers that will offer courses or be

instructors. The providers will develop classes and pay an annual filing fee to the Department.

Copies of these rules are now on file at the Department of Insurance's Web site at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jim Atterholt
Commissioner
Department of Insurance

Proposed Rules

TITLE 828 STATE BOARD OF DENTISTRY

Proposed Rule

LSA Document #05-226

DIGEST

Amends 828 IAC 0.5-2-3 and 828 IAC 0.5-2-4 concerning fees for licensure to practice dentistry and dental hygiene. Amends 828 IAC 1-1-1 through 828 IAC 1-1-3, 828 IAC 1-1-6, and 828 IAC 1-1-7 concerning the requirements for licensure of dentists by examination to facilitate the outsourcing of the administration of the examinations. Amends 828 IAC 1-2-1 through 828 IAC 1-2-3 and 828 IAC 1-2-6 concerning the requirements for licensure of dental hygienists by examination to facilitate the outsourcing of the administration of the examination. Amends 828 IAC 1-3-1.1, 828 IAC 1-3-1.5, and 828 IAC 1-3-2 concerning licensure to practice dentistry and dental hygiene by endorsement. Repeals 828 IAC 1-1-8, 828 IAC 1-1-12, 828 IAC 1-1-21, 828 IAC 1-2-7; 828 IAC 1-2-8, 828 IAC 1-2-9, 828 IAC 1-2-12, and 828 IAC 1-2-14. 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 621210 – Offices of Dentists

The State Board of Dentistry (Board) estimates that some small businesses will be directly affected by this rule. In 2004, the following numbers of applicants were licensed by the State Board of Dentistry:

Dentists: 101

Dental Hygienists: 192

Estimated Administrative Costs That Small Businesses Will Incur:

The State Board of Dentistry proposes to adopt rules that will permit applicants for licensure to take any one of four regional clinical examinations in order to qualify for licensure. Currently, the board administers its own state-prepared examination two times per year. The intent of the rule is to utilize examinations that are continuously updated and verified for content and validity. The regional examination bodies are made up of various state boards of dentistry. Not only are high quality examinations available from the regional boards, but the acceptance of regional boards will promote the mobility of dentists and dental hygienists.

The application fee for dentists to take the Northeast Regional Board (the examination that will be available at Indiana schools of dentistry and dental hygiene) is \$1,300. The examination fee for dental hygienists is \$700.

Estimated Total Annual Economic Impact On Small Businesses:

Dentists:

$(\$1,300 \text{ examination fee} + \$250 \text{ application fee}) \times 101 \text{ dental applicants} = \$156,550 \text{ per year.}$

Current examination fees $(\$250 \text{ application fee} + \105

$\text{dental model} + \$250 \text{ facility fee}) \times 101 \text{ dental students} = \$61,105. \text{ Impact} = \$95,445 \text{ annually on total number of dental applicants.}$

Impact per individual applicant = \$945.

Dental Hygienists:

$(\$700 \text{ examination fee} + \$100 \text{ application fee}) \times 192 \text{ dental hygiene applicants} = \$153,600 \text{ per year.}$

Current examination fees $(\$100 \text{ application fee} + \$100 \text{ facility fee}) \times 192 \text{ applicants} = \$38,400.$

Impact = \$115,000 annually on total number of dental hygiene applicants.

Impact per individual application = \$600.

Justification of Requirements or Costs

The Board has the authority to promulgate rules in accordance with IC 25-13-1-5 and IC 25-14-1-13. Examinations for licensure are required by statute: IC 25-13-1-4, IC 25-13-1-5, and IC 25-14-1-3. The board may utilize the regional examinations pursuant to IC 25-1-8-5.

Consideration of Alternative Methods of Achieving the Purpose of the Proposed Rule and Explanation of Determination:

The board considered accepting the examination of only one region. However, the board determined that in order to promote mobility of dentists and dental hygienists between the states, all four regional examinations should be accepted.

Supporting Data, Studies, or Analyses:

According to the American Association of Dental Examiners only ten states, including Indiana, maintain their status as independent testing agencies. All other states have joined at least one regional board.

The intent of the use of regional board examinations is to facilitate the licensure process for candidates and to eliminate the need for repetition of state board clinical examinations (taking a licensing examination in each state in which the practitioner desires to hold a license). Each regional board is comprised of a consortium of multiple state dental boards. Each regional board develops, administers, scores, and reports the results of its examinations in Dentistry and Dental Hygiene to states which accept the results in lieu of the state's own individually administered clinical examination.

828 IAC 0.5-2-3

828 IAC 0.5-2-4

828 IAC 1-1-1

828 IAC 1-1-2

828 IAC 1-1-3

828 IAC 1-1-6

828 IAC 1-1-7

828 IAC 1-1-8

828 IAC 1-1-12

828 IAC 1-1-21

828 IAC 1-2-1

828 IAC 1-2-2

828 IAC 1-2-3

828 IAC 1-2-6

828 IAC 1-2-7

828 IAC 1-2-8

828 IAC 1-2-9

828 IAC 1-2-12

828 IAC 1-2-14

828 IAC 1-3-1.1

828 IAC 1-3-1.5

828 IAC 1-3-2

SECTION 1. 828 IAC 0.5-2-3, AS AMENDED AT 28 IR

2713, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

828 IAC 0.5-2-3 Dental fees

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

Affected: IC 25-13-1-8; IC 25-14-1-10

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

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

tion for the following permits:

(A) GADS

(B) LPCS

~~(18)~~ (17) Renewal fee for instructor's GADS/LPCS permit \$25 annually

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

SECTION 2. 828 IAC 0.5-2-4 IS AMENDED TO READ AS FOLLOWS:

828 IAC 0.5-2-4 Dental hygiene fees

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

Affected: IC 25-13-1-8; IC 25-14-1-10

Sec. 4. The board shall charge and collect the following fees related to the practice of dental hygiene:

- (1) Examination and/or reexamination **Application for licensure**
- (2) **Repeat** law examination only
- ~~(3)~~ Licensure by endorsement
- ~~(4)~~ (3) License renewal
- ~~(5)~~ (4) Dental hygiene intern permit application
- ~~(6)~~ (5) Dental hygiene intern permit renewal
- ~~(7)~~ (6) Verification of dental hygiene licensure to another state
- ~~(8)~~ (7) Duplicate wall license
- ~~(9)~~ (8) Reinstatement of inactive license

(State Board of Dentistry; 828 IAC 0.5-2-4; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1181; filed Oct 8, 2002, 12:40 p.m.: 26 IR 376)

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

828 IAC 1-1-1 Qualifications of applicants; approved dental schools

Authority: IC 25-14-1-13

Affected: IC 25-14-1-16

Sec. 1. All applicants for licensure to practice dentistry must:

- (1) have graduated from ~~an accredited and approved~~ a dental school **accredited by the Commission on Accreditation of the American Dental Association**; and ~~must~~
- (2) submit certification of having completed, within the prior year, an American Red Cross or American Heart Association cardiopulmonary resuscitation course or ~~such another~~ course ~~as may be approved by the board. An approved dental school is one which requires the following:~~
- ~~(1) Graduation from high school; or equivalent training;~~
- ~~(2) The successful completion of two (2) full academic years of work in a college of liberal arts or sciences. This college course must include at least one (1) year of college credit in English, biology, physics, and inorganic chemistry and one-half (1/2) year of college credit in organic chemistry. All~~

Proposed Rules

courses in science shall include both class and laboratory instruction. Formal credit in biology and physics, but not in English and chemistry, may be waived in the case of an exceptional student with three (3) years of college credit or a student holding a bachelor's or other degree from an accredited college.

(3) Four (4) academic years in a dental school which presents a curriculum, including at least the following subjects:

(A) Anatomy; macroscopic and microscopic.

(B) Oral surgery.

(C) Bacteriology.

(D) Pharmacology and materia medica.

(E) Operative dentistry.

(F) Physiology.

(G) Oral anatomy.

(H) Periodontia.

(I) Endodontia.

(J) Prosthodontia.

(K) Anesthesia; general and local.

(L) Preventive dentistry.

(M) Pathology.

(N) Medicine.

(O) Diagnosis.

(P) Radiology.

(Q) Orthodontia.

(R) Dentistry for children.

(S) Dental materials.

(T) Public health.

(U) Hygiene.

(V) History of dentistry.

(W) Practice management.

(X) Ethics.

(Y) Jurisprudence.

(State Board of Dentistry; PT 1, Rule 1; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 48; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 191; filed Nov 7, 1980, 12:45 p.m.: 3 IR 2189; filed Oct 12, 1993, 5:00 p.m.: 17 IR 399; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896)

SECTION 4. 828 IAC 1-1-2 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-2 Application forms

Authority: IC 4-1-8-1; IC 25-14-1-13

Affected: IC 25-14-1-3; IC 25-14-1-16

Sec. 2. (a) The applicant for **examination licensure** must complete the application on forms prescribed and provided by the board. All statements contained in the application must be verified by the applicant. The verified application, **all examination** fees, and other documents that the board may require must be submitted to the board. **office at least forty-five (45) days prior to the first day of the examination.**

(b) **The following** proof that the applicant is a graduate of a dental school that is recognized by the board must be submitted:

to the board at least seven (7) days prior to the examination. The following documents must be submitted:

(1) An official transcript showing the date the degree was conferred.

(2) An official diploma or a certificate of completion signed by the:

(A) dean of the applicant's professional school; and the

(B) registrar of the university or college.

(c) Additional documents to be submitted by the applicant for a license include the following:

(1) Where the name on any document differs from the applicant's name, one (1) of the following:

(A) A notarized or certified copy of a marriage certificate.

(B) Legal proof of a name change.

(2) Two (2) recent passport-type photographs of the applicant, taken within eight (8) weeks before filing of the application.

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

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

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

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

(D) The penalty imposed by the court.

(4) An applicant who is now, or has been, licensed to practice any health profession in another state or Canadian province must submit verification of license status. This information must be sent by the state or province that issued the license directly to the Indiana board.

(5) An applicant who is now, or has been, licensed to practice any health profession in another state shall submit a self-query form completed by the following:

(A) The National Practitioner Data Bank (NPDB).

(B) The Healthcare Integrity and Protection Data Bank (HIPDB) data bank.

(d) All applicants must submit the applicant's United States Social Security number in order to be eligible for licensure. (State Board of Dentistry; PT 1, Rule 2; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 49; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 191; filed Oct 16, 1985, 3:57 p.m.: 9 IR 520; filed Oct 12, 1993, 5:00 p.m.: 17 IR 400; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; filed Feb 28, 2002, 3:17 p.m.: 25 IR 2239)

SECTION 5. 828 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-3 Examinations required for licensure

Authority: IC 25-14-1-13
Affected: IC 25-14-1-3

Sec. 3. ~~(a)~~ In order to obtain an Indiana license to practice dentistry, each ~~candidate~~ **applicant** must pass an examination that includes **the following**:

- (1) All sections of the national dental board examination.
- (2) A clinical examination.
- (3) A written examination covering Indiana law relating to the practice of dentistry and dental hygiene.

~~(b) A passing score must be obtained on all sections of the national board dental examination before any candidate may take the clinical or law examinations. (State Board of Dentistry; PT 1, Rule 3; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 49; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 192; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1726; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; filed Feb 28, 2002, 3:17 p.m.: 25 IR 2239; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2278)~~

SECTION 6. 828 IAC 1-1-6 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-6 National board examination; dental and dental hygiene law examinations

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

Sec. 6. (a) A passing score on a national board dental examination, as approved by the board, must be ~~attained~~ **achieved** by the ~~candidate~~ **applicant** before the ~~candidate applicant~~ will be permitted to take the ~~clinical portion of the examination and the~~ written examination covering Indiana law relating to the practice of dentistry and dental hygiene.

(b) Passage of the Indiana dental and dental hygiene law examination with a score of at least seventy-five (75) is mandatory before the ~~candidate~~ **applicant** may be licensed. ~~Candidates Applicants~~ failing the law examination may retake the law examination at a time, date, and place to be set by the board not sooner than thirty (30) days from the time the law examination was last taken. *(State Board of Dentistry; PT 1, Rule 6; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 50; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 192; filed Apr 12, 1984, 8:34 a.m.: 7 IR 1520; filed Nov 7, 1986, 9:00 a.m.: 10 IR 431; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1726; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; filed Feb 28, 2002, 3:17 p.m.: 25 IR 2240; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2279)*

SECTION 7. 828 IAC 1-1-7 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-7 Clinical examination

Authority: IC 25-1-8-5; IC 25-14-1-13
Affected: IC 25-14-1-3

Sec. 7. ~~The clinical~~ **To be eligible for licensure by examination, shall consist an applicant must meet any one (1) of the following sections (or procedures):**

- ~~(1) Oral diagnosis and treatment planning; infection control; and periodontics.~~
- ~~(2) Operative dentistry.~~
- ~~(3) Prosthetic dentistry.~~

~~The procedure for administering this examination will be determined by the board. Each candidate shall be required to have a score of seventy-five (75) or more in each section to pass the clinical examination requirements:~~

- (1) Have passed all parts of one (1) of the following examinations within the five (5) year period immediately before the date of the board's receipt of the applicant's application:**

- (A) The Central Regional Dental Testing Service (CRDTS) examination.**
- (B) The North East Regional Board (NERB) examination.**
- (C) The Southern Regional Testing Agency (SRTA) examination.**
- (D) The Western Regional Examining Board (WREB) examination.**

- (2) Have taken an examination administered by the board and received a passing score as established by the board.** *(State Board of Dentistry; PT 1, Rule 7; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 50; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 192; filed Oct 12, 1993, 5:00 p.m.: 17 IR 400; filed Sep 11, 2000, 2:23 p.m.: 24 IR 377; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2279)*

SECTION 8. 828 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-1 Qualifications of applicants; accredited and approved dental hygiene schools

Authority: IC 25-13-1-5
Affected: IC 25-13-1-6

Sec. 1. All applicants for licensure to practice dental hygiene must:

- (1) have graduated from an accredited and approved a school of dental hygiene school that is accredited by the Commission on Dental Accreditation of the American Dental Association; and must**
- (2) submit certification of having completed within the prior year an American Red Cross or American Heart Association cardiopulmonary resuscitation course or such another course as may be approved by the board. An accredited and approved dental hygiene school is one that requires the following:**
 - (1) Graduation from high school or equivalent training;**
 - (2) Two (2) academic years in a dental hygiene school that presents a curriculum, including, at least, the following**

subjects:

- (A) Anatomy, general and oral;
- (B) Pharmacology;
- (C) Microbiology and immunology;
- (D) Radiology;
- (E) Physiology;
- (F) Preventive dentistry;
- (G) Dental hygiene science;
- (H) Histology;
- (I) Chemistry;
- (J) Dental materials;
- (K) Periodontology;
- (L) Nutrition;
- (M) Pathology, general and oral;
- (N) Oral and written communication;
- (O) Psychology;
- (P) Sociology;
- (Q) Community dental health;

(State Board of Dentistry; PT 2, Rule 1; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 51; filed Nov 7, 1980, 12:45 p.m.: 3 IR 2190; filed Oct 12, 1993, 5:00 p.m.: 17 IR 401; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; filed Feb 28, 2002, 3:17 p.m.: 25 IR 2243)

SECTION 9. 828 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-2 Application forms

Authority: IC 4-1-8-1; IC 25-13-1-5

Affected: IC 25-13-1-4

Sec. 2. (a) The applicant for ~~examination licensure~~ must complete the application on forms prescribed and provided by the board. The applicant shall verify all statements contained in the application. The verified application, ~~all examination fees,~~ and other documents that the board may require must be submitted to the board. ~~office at least forty-five (45) days prior to the first day of the examination.~~

(b) ~~The following~~ proof that the applicant is a graduate of a school of dental hygiene that is recognized by the board must be submitted to the board: ~~at least seven (7) days prior to the examination. The following documents must be submitted: as follows:~~

- (1) An official transcript showing the date the degree was conferred.
- (2) An official diploma or a certificate of completion signed by the dean and the registrar of the applicant's school.

(c) ~~Additional documents to be submitted by the applicant for a license include the following:~~

- (1) ~~Where the name on any document differs from the applicant's name, one (1) of the following:~~
 - (A) ~~A notarized or certified copy of a marriage certificate.~~
 - (B) ~~Legal proof of a name change.~~

(2) ~~Two (2) recent passport-type photographs of the applicant, taken within eight (8) weeks before filing of the application.~~

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

- (A) ~~The offense of which the applicant was convicted.~~
- (B) ~~The court in which the applicant was convicted.~~
- (C) ~~The cause number under which the applicant was convicted.~~
- (D) ~~The penalty imposed by the court.~~

(4) ~~An applicant who is now, or has been, licensed to practice any health profession in another state or Canadian province must submit verification of license status. This information must be sent by the state or province that issued the license directly to the Indiana board.~~

(5) ~~An applicant who is now, or has been, licensed to practice any health profession in another state shall submit a self-query form completed by the following:~~

- (A) ~~The National Practitioner Data Bank (NPDB).~~
- (B) ~~The Healthcare Integrity and Protection Data Bank (HIPDB) data bank.~~

(d) ~~All applicants must submit the applicant's United States Social Security number in order to be eligible for licensure. (State Board of Dentistry; PT 2, Rule 2; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 52; filed Oct 16, 1985, 3:57 p.m.: 9 IR 522; filed Oct 12, 1993, 5:00 p.m.: 17 IR 401; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; filed Feb 28, 2002, 3:17 p.m.: 25 IR 2243)~~

SECTION 10. 828 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-3 Examinations required for licensure

Authority: IC 25-1-8-5; IC 25-13-1-5

Affected: IC 25-13-1-4; IC 25-13-1-7

Sec. 3. (a) In order to obtain an Indiana license to practice dental hygiene, each ~~candidate applicant~~ must pass an examination that includes ~~the following:~~

- (1) All sections of the national dental hygiene board examination.
- (2) A clinical examination.
- (3) A written examination covering Indiana law relating to the practice of dentistry and dental hygiene.

(b) ~~A passing score must be obtained on all sections of the national board dental hygiene examination before any candidate may take the clinical or law examinations.~~

(b) ~~To be eligible for licensure by examination, an applicant must meet any one (1) of the following clinical~~

examination requirements:

- (1) Have passed all parts of one (1) of the following examinations within the five (5) year period immediately before the date of the board's receipt of the applicant's application:
 - (A) The Central Regional Dental Testing Service (CRDTS) examination.
 - (B) The North East Regional Board (NERB) examination.
 - (C) The Southern Regional Testing Agency (SRTA) examination.
 - (D) The Western Regional Examining Board (WREB) examination.
- (2) Have taken an examination administered by the board and received a passing score as established by the board.

(State Board of Dentistry; PT 2, Rule 3; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 52; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1727; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; filed Feb 28, 2002, 3:17 p.m.: 25 IR 2244; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2279)

SECTION 11. 828 IAC 1-2-6 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-6 National board examination; dental and dental hygiene law examination

Authority: IC 25-13-1-5
Affected: IC 25-13-1-4; IC 25-13-1-7

Sec. 6. (a) A passing score on a national board dental hygiene examination, as approved by the board, must be ~~attained~~ **achieved** by the ~~candidate~~ **applicant** before the ~~candidate~~ **applicant** will be permitted to take the ~~clinical portion of the examination and the~~ written examination covering Indiana law relating to the practice of dentistry and dental hygiene.

(b) Passage of the Indiana dental and dental hygiene law examination with a score of at least seventy-five (75) is mandatory before the ~~candidate~~ **applicant** may be licensed. ~~Candidates~~ **Applicants** failing the law examination may retake the law examination at a time, date, and place to be set by the board not sooner than thirty (30) days from the time the law examination was last taken. *(State Board of Dentistry; PT 2, Rule 6; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 52; filed Apr 12, 1984, 8:34 a.m.: 7 IR 1521; filed Nov 7, 1986, 9:00 a.m.: 10 IR 431; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1727; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1014; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; filed Feb 28, 2002, 3:17 p.m.: 25 IR 2244; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2280)*

SECTION 12. 828 IAC 1-3-1.1 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-3-1.1 Dental licensure by endorsement; credentials

Authority: IC 4-1-8-1; IC 25-14-1-13
Affected: IC 25-14-1-16

Sec. 1.1. (a) Persons seeking licensure to practice dentistry by endorsement shall **do the following:**

- (1) File an application on a form supplied by the board. ~~and~~
- (2) Submit the fees required by 828 IAC 0.5-2-3.

(b) The applicant for a license shall provide the following:

(1) Where the name on any document differs from the applicant's name, **one (1) of the following:**

- (A) A notarized or certified copy of a marriage certificate. ~~or~~
- (B) Legal proof of a name change.

(2) Two (2) recent passport-type photographs of the applicant, taken within eight (8) weeks ~~prior to~~ **before** filing of the application.

(3) An original transcript of the applicant's dental education, including **the following:**

- (A) The degree or degrees conferred. ~~and~~
- (B) The date each degree was conferred.

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

- (A) The offense of which the applicant was convicted.
- (B) The court in which the applicant was convicted.
- (C) The cause number under which the applicant was convicted.
- (D) The penalty imposed by the court.

(5) An applicant who is now, or has been, licensed to practice any health profession in another state or Canadian province must submit verification of license status. This information must be sent by the state or province that issued the license directly to the Indiana board.

(6) The applicant shall submit a self-query form completed by **the following:**

- (A) The National Practitioner Data Bank (NPDB). ~~and~~
- (B) The Healthcare Integrity and Protection Data Bank (HIPDB) data bank.

(7) The applicant shall submit proof of **the following:**

(A) Completion of at least twenty (20) hours of continuing dental education taken in the previous two (2) years. No more than two (2) hours of training in basic life support shall count toward this requirement.

~~(8) The applicant shall submit proof~~ (B) That the applicant successfully completed the:

(i) National Board Dental Examination provided by the Joint Commission on Dental Examinations; or ~~successfully completed the~~

(ii) National Dental Examining Board of Canada Written Examination provided by the National Dental Examining Board of Canada.

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~~(9) The applicant shall submit proof (C) That the applicant satisfactorily completed a national, regional, state, or provincial clinical licensing examination in any other state or Canadian province having and maintaining a standard of examination for licensure and laws regulating the practice of dentistry within that state or province that are is substantially equivalent to the examination and licensing requirements of Indiana.~~

~~(10) The applicant shall submit proof (D) That the applicant has been engaged in the active practice of dentistry for not less than five (5) two (2) years out of the nine (9) three (3) years immediately preceding the submission of the application.~~

~~(11) (8) The applicant shall submit the following:~~

~~(A) Written statements from at least three (3) practicing dentists verifying the applicant's active, moral, and ethical practice of dentistry. The statements must:~~

~~(i) be originals; and must~~

~~(ii) have been written not more than eight (8) weeks prior to before the submission of the application.~~

~~(12) The applicant shall submit (B) Proof that the applicant is currently certified in one (1) of the following:~~

~~(i) Basic life support. or~~

~~(ii) Advanced cardiac life support.~~

~~(13) (9) All information on the application shall be submitted under oath or affirmation, subject to the penalties for perjury.~~

~~(c) An applicant who has previously failed an examination for licensure administered by the board is not eligible to apply for a license by endorsement, until such applicant has passed all portions of the examination in which he or she failed or provides the board with proof that additional training has been received in the subjects of the failure.~~

(c) All applicants must submit the applicant's United States Social Security number in order to be eligible for licensure. (State Board of Dentistry; 828 IAC 1-3-1.1; filed Sep 27, 2002, 2:38 p.m.: 26 IR 373; errata filed Sep 27, 2002, 2:59 p.m.: 26 IR 383)

SECTION 13. 828 IAC 1-3-1.5 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-3-1.5 Licensure to practice dental hygiene by endorsement; credentials

Authority: IC 4-1-8-1; IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-7; IC 25-13-1-17

Sec. 1.5. (a) Persons seeking licensure to practice dental hygiene by endorsement shall **do the following:**

- (1) File an application on a form supplied by the board. and**
- (2) Submit the fees required by 828 IAC 0.5-2-4.**

(b) The applicant for a license shall provide the following:

- (1) Where the name on any document differs from the applicant's name, **one (1) of the following:**

(A) A notarized or certified copy of a marriage certificate. or

(B) Legal proof of a name change.

(2) Two (2) recent passport-type photographs of the applicant, taken within eight (8) weeks prior to before filing of the application.

(3) An original transcript of the applicant's dental hygiene education, including the following:

(A) The degree or degrees conferred. and

(B) The date each degree was conferred.

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

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

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

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

(D) The penalty imposed by the court.

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

(6) The applicant shall submit the following:

(A) A self-query form completed by the following:

(i) The National Practitioner Data Bank (NPDB). and

(ii) The Healthcare Integrity and Protection Data Bank (HIPDB) data bank.

(7) The applicant shall submit (B) Proof of completion of at least fourteen (14) hours of continuing dental hygiene education taken within the previous two (2) years. No more than two (2) hours of training in basic life support shall count toward this requirement.

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

(9) (8) The applicant shall submit the following proof that the applicant:

(A) Satisfactorily completed the following:

(i) The National Board Dental Hygiene Examination provided by the Joint Commission on Dental Examinations.

~~(10) The applicant shall submit proof that the applicant satisfactorily completed (ii) A national, regional, or state clinical licensing examination in any other state having and maintaining a standard of examination for licensure and laws regulating the practice of dental hygiene within that state or province that are is substantially equivalent to the examination and licensing requirements of Indiana.~~

~~(11) The applicant shall submit proof that the applicant (B) Has been engaged in the active practice of dental hygiene for not less than two (2) years out of the five (5) years immediately preceding the submission of the application.~~

~~(+2)~~ (9) The applicant shall submit **the following**:

(A) Written statements from at least three (3) practicing dentists verifying the applicant's active, moral, and ethical practice of dental hygiene. The statements must:

(i) be originals; and ~~must~~

(ii) have been written not more than eight (8) weeks ~~prior~~ **to before** the submission of the application.

~~(+3) The applicant shall submit~~ (B) Proof that the applicant is currently certified in basic life support.

(c) An applicant who has previously failed an examination for licensure administered by the board is not eligible to apply for a license by endorsement until ~~such~~ **the** applicant:

(1) has passed all portions of the examination in which he or she failed; or

(2) provides the board with proof that additional training has been received in the subjects of the failure.

(d) **All applicants must submit the applicant's United States Social Security number in order to be eligible for licensure.** (*State Board of Dentistry; 828 IAC 1-3-1.5; filed Sep 27, 2002, 2:38 p.m.: 26 IR 374*)

SECTION 14. 828 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-3-2 "Practice of dentistry" defined

Authority: IC 25-14-1-13

Affected: IC 25-14-1-16

Sec. 2. (a) Under IC 25-14-1-16(b)(2), an applicant for licensure by endorsement must have practiced dentistry for at least ~~five (5) two (2)~~ out of the ~~nine (9) three (3)~~ years preceding the date of application.

(b) "Practice of dentistry" means that the applicant has actively engaged in clinical patient contact for at least an average of twenty (20) hours per week for ~~five (5) two (2)~~ years. A maximum of ~~two (2) years one (1) year~~ of the ~~five (5) two (2)~~ year requirement may have been in postdoctoral training in a program approved by the board. (*State Board of Dentistry; 828 IAC 1-3-2; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1728; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; filed Sep 27, 2002, 2:38 p.m.: 26 IR 375*)

SECTION 15. THE FOLLOWING ARE REPEALED: 828 IAC 1-1-8; 828 IAC 1-1-12; 828 IAC 1-1-21; 828 IAC 1-2-7; 828 IAC 1-2-8; 828 IAC 1-2-9; 828 IAC 1-2-12; 828 IAC 1-2-14.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 3, 2006 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the State Board of Dentistry will hold a public hearing

on proposed amendments concerning fees for licensure to practice dentistry and dental hygiene, the requirements for licensure of dentists by examination to facilitate the outsourcing of the administration of the examinations, the requirements for licensure of dental hygienists by examination to facilitate the outsourcing of the administration of the examination, and licensure to practice dentistry and dental hygiene by endorsement.

The State Board of Dentistry has the authority to promulgate rules establishing the fees application for the application and examination for licensure to practice dentistry and dental hygiene. The board has the authority to set examination requirements for licensure and to utilize the examinations of a regional examination entity for the purposes of licensure. This proposed rule will have costs to entities.

Copies of these rules are now on file at the Indiana Professional Licensing Agency, Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly

Executive Director

Indiana Professional Licensing Agency

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

Proposed Rule

LSA Document #05-222

DIGEST

Amends 864 IAC 1.1-4.1-7 to implement rule changes based on SEA 139-2005 (P.L.194-2005) to change the number of examination attempts for registration as a professional engineer. Amends 864 IAC 1.1-4.1-8 to implement rule changes based on SEA 139-2005 (P.L.194-2005) to bring the termination of application in conformity with the examination attempts for registration as a professional engineer. Amends 864 IAC 1.1-4.1-9 to implement rule changes based on SEA 139-2005 (P.L.194-2005) to change the number of examination attempts for registration as an engineer intern. 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:

NAICS 541330 Engineering Services

The State Board of Registration for Professional Engineers (Board) estimates that no small businesses will be directly affected by this rule. The Board has the authority to promulgate rules in accordance with IC 25-31-1-7, including establishing

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the requirements and examination attempts for registration as a professional engineer and an engineer intern. This proposed rule will not have any costs on small businesses.

864 IAC 1.1-4.1-7

864 IAC 1.1-4.1-8

864 IAC 1.1-4.1-9

SECTION 1. 864 IAC 1.1-4.1-7 IS AMENDED TO READ AS FOLLOWS:

864 IAC 1.1-4.1-7 Examination attempts for registration as a professional engineer

Authority: IC 25-31-1-7

Affected: IC 25-31-1-14

Sec. 7. (a) This section applies to the examination for registration as a professional engineer.

(b) An applicant who does not pass the entire fundamentals of engineering examination (Part I) in the first attempt shall be entitled to take ~~it one (1)~~ **the examination two (2)** additional ~~time provided that times.~~ **However**, the applicant's:

(1) second examination ~~is must be~~ taken at either of the next two (2) regularly scheduled examinations after the failure of the first examination; **and**

(2) **third examination must be taken at either of the next two (2) regularly scheduled examinations after the failure of the second examination.**

(c) **An applicant who took the fundamentals of engineering examination two (2) times before July 1, 2005, shall not be entitled to further examination attempts under subsection (b). An applicant who took the fundamentals of engineering examination one (1) time before July 1, 2005, shall be entitled to two (2) additional examination attempts as long as the requirements stated in subsection (b) for timing of each examination attempt are met.**

~~(c)~~ (d) Upon the exhaustion of the examination attempts allowed under subsection (b), the application shall be deemed terminated.

~~(d)~~ (e) An applicant who does not pass the principles and practice examination (Part II) and Part III on the first attempt shall be entitled to take ~~them one (1)~~ **the examinations two (2)** additional ~~time provided that times.~~ **However**, the applicant's:

(1) second examination ~~is must be~~ taken at either of the next two (2) regularly scheduled examinations after the failure of the first examination; **and**

(2) **third examination must be taken at either of the next two (2) regularly scheduled examinations after the failure of the second examination.**

(f) **An applicant who took the principles and practice examination two (2) times before July 1, 2005, shall not be**

entitled to further examination attempts under subsection (b). An applicant who took the principles and practice examination one (1) time before July 1, 2005, shall be entitled to two (2) additional examination attempts as long as the requirements stated in subsection (b) for timing of each examination attempt are met.

~~(c)~~ (g) If the applicant passed Part II or Part III of the examination on the first attempt, the applicant will not be required to retake the passed part in the second examination allowed by subsection ~~(d)~~; (e).

(f) (h) Upon the exhaustion of the examination attempts allowed by subsection ~~(d)~~; (e), the application shall be deemed terminated.

~~(g)~~ (i) If an application is terminated under subsection (f); (h), the applicant shall not lose credit for a previous passing of the fundamentals of engineering examination. However, the applicant shall lose credit for passing either Part II or Part III.

~~(h)~~ (j) For purposes of this section, examination attempts out-of-state count. (*State Board of Registration for Professional Engineers; 864 IAC 1.1-4.1-7; filed Jun 21, 1988, 4:00 p.m.: 11 IR 3906; filed Jul 24, 1989, 5:00 p.m.: 12 IR 2284; filed Sep 24, 1992, 9:00 a.m.: 16 IR 728; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2107; readopted filed Jun 21, 2001, 9:01 a.m.: 24 IR 3824*)

SECTION 2. 864 IAC 1.1-4.1-8 IS AMENDED TO READ AS FOLLOWS:

864 IAC 1.1-4.1-8 Terminated applications; reapplication for admission, qualifications

Authority: IC 25-31-1-7

Affected: IC 25-31-1-12; IC 25-31-1-14

Sec. 8. (a) An individual whose application has been deemed terminated under section ~~7(c)~~; ~~7(f)~~; ~~7(d)~~, ~~7(h)~~, or ~~9(d)~~ **9(e)** of this rule may reapply for admission to the applicable examination.

(b) In order for readmission to be granted, the applicant must meet the education and experience requirements in effect at the time of reapplication and must have completed the following:

(1) Since the termination of the application, nine (9) or more semester credit hours of college level courses related to the applicant's examination deficiency.

(2) Appropriate experience of the type required under IC 25-31-1-12 for at least two (2) years subsequent to the termination of the application.

Under this subsection, the date of termination shall be deemed to be the date the ~~second~~ **third** examination was taken.

(c) An applicant who is readmitted to an examination under this section shall be treated as if the applicant had not previously taken the examination for all purposes under sections 5

and 7 of this rule.

(d) Individuals may be deemed terminated partially or completely because of out-of-state examination attempts. Therefore, an applicant will be required to comply with subsection (b) even if the first, second, **third**, or ~~both~~ **all** examination attempts are out-of-state.

(e) Individuals shall be deemed terminated under section ~~7(f)~~ **7(d)** or ~~9(d)~~ **9(e)** of this rule on the basis of all fundamentals of engineering examination attempts. Therefore, applicants will be required to comply with subsection (b) once the applicant has had ~~two (2)~~ **three (3)** fundamentals of engineering examination attempts regardless of whether ~~they~~ **the examination attempts** were as:

- (1) an engineering intern applicant; or
- (2) a professional engineer applicant.

(f) For purposes of this section and sections 7 and 9 of this rule, an examination attempt:

- (1) means the actual taking of the examination; and
- (2) does not include a failure to appear to take the examination.

(State Board of Registration for Professional Engineers; 864 IAC 1.1-4.1-8; filed Jun 21, 1988, 4:00 p.m.: 11 IR 3907; errata filed Feb 5, 1990, 4:15 p.m.: 13 IR 1066; filed Nov 15, 1990, 1:35 p.m.: 14 IR 757; filed Sep 24, 1992, 9:00 a.m.: 16 IR 728; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2108; readopted filed Jun 21, 2001, 9:01 a.m.: 24 IR 3824)

SECTION 3. 864 IAC 1.1-4.1-9, AS AMENDED AT 28 IR 603, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

864 IAC 1.1-4.1-9 Examination attempts for certification as an EI

Authority: IC 25-31-1-7

Affected: IC 25-31-1-13; IC 25-31-1-14

Sec. 9. (a) This section applies to the examinations for certification as an EI.

(b) An applicant who does not pass the examination may take it ~~one (1)~~ **the examination two (2)** additional ~~time~~ **provided that times**. However, the ~~applicant requests to~~ **applicant's:**

- (1) **second examination must be admitted to taken at either of the next two (2) regularly scheduled examinations after the failure of the first examination; and**
- (2) **third examination must be taken at either of the next two (2) regularly scheduled examinations after the failure of the second examination.**

(c) An applicant who took the examination **two (2)** times before July 1, 2005, shall not be entitled to further examination attempts under subsection (b). An applicant who took the examination **one (1)** time before July 1, 2005, shall be entitled to **two (2)** additional examination attempts as long

as the requirements stated in subsection (b) for timing of each examination attempt are met.

~~(e)~~ **(d)** An applicant who took the examination the first time on a college campus, as allowed by 864 IAC 1.1-2-4(b), may take the examination ~~one (1)~~ **two (2)** additional ~~time~~ **times** provided the applicant **does the following:**

- (1) Complies with subsection (b).
- (2) Pays the fees under **the following:**
 - (A) 864 IAC 1.1-12-1(1). ~~and~~
 - (B) 864 IAC 1.1-12-2.
- (3) Submits a certified copy of educational transcripts showing any degree conferred.
- (4) Provides three (3) references as required under IC 25-31-1-13(a). ~~and~~
- (5) Otherwise qualifies for admission to the examination.

~~(d)~~ **(e)** Upon the exhaustion of the examination attempts allowed by this section, the application shall be deemed terminated.

~~(e)~~ **(f)** For ~~the~~ purposes of this section, examination attempts out-of-state count. *(State Board of Registration for Professional Engineers; 864 IAC 1.1-4.1-9; filed Jun 21, 1988, 4:00 p.m.: 11 IR 3907; filed Sep 24, 1992, 9:00 a.m.: 16 IR 729; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2108; readopted filed Jun 21, 2001, 9:01 a.m.: 24 IR 3824; filed Sep 16, 2004, 9:00 a.m.: 28 IR 603, eff Nov 1, 2004)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 16, 2006 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the State Board of Registration for Professional Engineers will hold a public hearing on proposed amendments to implement rule changes based on SEA 139-2005 (P.L.194-2005), including changes to the number of examination attempts for registration as a professional engineer, changes to bring the termination of application in conformity with the examination attempts for registration as a professional engineer, and changes to the number of examination attempts for registration as an engineer intern.

The State Board of Registration for Professional Engineers has the authority to promulgate rules in accordance with IC 25-31-1-7, including establishing the requirements and examination attempts for registration as a professional engineer and an engineer intern. The proposed rule is being promulgated to implement rule changes based on SEA 139-2005 (P.L.194-2005) to change the number of examination attempts for registration as a professional engineer and an engineer intern. This proposed rule will have some costs on the regulated entities. The regulated entity will have to pay to register to sit for another licensing examination. However, the regulated entity is given another opportunity to sit for the licensing

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examination before being required to obtain additional education and to reapply to sit for the licensing examination.

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 20 STATE BOARD OF ACCOUNTS**

Final Rule
LSA Document #05-147(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 #05-147, printed at 28 IR 3351, was resubmitted for publication and reprinted at 28 IR 3351.* Effective 30 days after filing with the Secretary of State.

20 IAC 3

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

20 IAC 3 DIGITAL SIGNATURES

LSA Document #05-147(F)
Intent to Readopt Rules Published: July 1, 2005: 28 IR 3051;
August 1, 2005: 28 IR 3351
Filed with Secretary of State: November 21, 2005, 9:15 a.m.

**TITLE 280 DIVISION OF PREPAREDNESS
AND TRAINING**

NOTE: Under P.L.22-2005, SECTION 59, the name of the Public Safety Training Board is changed to the Division of Preparedness and Training, effective April 15, 2005.

Final Rule
LSA Document #05-300(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.

280 IAC 1-1
280 IAC 1-2

280 IAC 1-3
280 IAC 1-4

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

280 IAC 1-1 Definitions
280 IAC 1-2 Training Facilities and Materials

280 IAC 1-3 Diplomas or Certificates
280 IAC 1-4 Advanced Handler and Canine Teams

LSA Document #05-300(F)
Intent to Readopt Rules Published: November 1, 2005; 29 IR 690
Filed with Secretary of State: November 29, 2005, 8:30 a.m.

**TITLE 357 INDIANA PESTICIDE REVIEW
BOARD**

Final Rule
LSA Document #05-171(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 #05-171, printed at 28 IR 3051, was resubmitted for publication and reprinted at 28 IR 3351.* Effective 30 days after filing with the Secretary of State.

357 IAC 1-8

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

357 IAC 1-8 Indiana Pesticide Law Violators; Public Listing

LSA Document #05-171(F)
Intent to Readopt Rules Published: July 1, 2005: 28 IR 3051;
August 1, 2005: 28 IR 3351
Filed with Secretary of State: December 2, 2005, 2:30 p.m.

**TITLE 590 INDIANA LIBRARY AND
HISTORICAL BOARD**

Final Rule
LSA Document #05-89(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 #05-89, printed at 28 IR 2813, was resubmitted for publication and reprinted at 28 IR 3351.* Effective 30 days after filing with the Secretary of State.

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING

Readopted Rules

ARE READOPTED:

590 IAC 3 STATEWIDE LIBRARY CARD PROGRAM

LSA Document #05-89(F)

Intent to Readopt Rules Published: June 1, 2005: 28 IR 2813;

August 1, 2005: 28 IR 3351

Filed with Secretary of State: December 1, 2005, 2:30 p.m.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

Final Rule

LSA Document #05-180(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.

905 IAC 1-42

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING
ARE READOPTED:

905 IAC 1-42 Nonprobationary Enforcement Officer; Dis-
charge, Demotion, or Suspension

LSA Document #05-180(F)

Intent to Readopt Rules Published: August 1, 2005; 28 IR 3352

Filed with Secretary of State: November 28, 2005, 3:15 p.m.

1 Year Notice (IC 4-22-2-25)

**TITLE 675 FIRE PREVENTION AND BUILDING
SAFETY COMMISSION**

LSA Document #05-50

November 29, 2005

Representative Michael Murphy, Chairperson
Administrative Rules Oversight Committee
c/o Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Attention: Sarah Burkman

Subject: LSA Document #05-50

Dear Representative Murphy:

On behalf of the Fire Prevention and Building Safety Commission, 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 may not be completed within one year after publication of the notice of intent to adopt a rule.

The commission published its notice of intent to adopt a rule for the captioned document on April 1, 2005 (28 IR 2157). As of this date the proposed rule is not completed in a form suitable for publishing in the Indiana Register.

The expected date that the rule may be adopted by the commission is September 6, 2006.

The expected date that the rule may be approved by the Governor is December 4, 2006.

The two hundred fiftieth day after publication of the notice of intent to adopt a rule is December 7, 2005.

Yours truly,

Mara J. Snyder
Director,
Legal and Code Services Branch
Indiana Department of Homeland Security

**TITLE 865 STATE BOARD OF REGISTRATION
FOR LAND SURVEYORS**

LSA Document #05-82

December 5, 2005

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 #05-82 — Proposed Rule regarding education and standards of competent practice for land surveyors

Dear Representative Murphy:

On behalf of the State Board of Registration for Land Surveyors (Board), Indiana Professional Licensing Agency, I am submitting this notice to the Administrative Rules Oversight Committee in compliance with IC 4-22-2-25, because the Board has determined there is a possibility that the promulgation of the captioned rule may not be completed within one (1) year after publication of the notice of intent to adopt a rule.

The Board published its notice of intent to adopt a rule for the captioned document on May 1, 2005 (28 IR 2409). The proposed rule was published on October 1, 2005 (29 IR 659). The change of public hearing notice will be published on January 1, 2006 for a public hearing to occur on February 10, 2006. This proposed rule clarifies language to make the rules consistent with the Board's statutes, removes out-of-date and unnecessary language in the rules, revises and clarifies the standards for the competent practice of land surveying to reflect the current practice and to assist the Board in disciplinary hearings, revises the continuing education requirements to allow licensees to carry over excess hours, and allow continuing education providers to submit continuing education hours electronically. Although the Board intends to have this rule approved by the governor by May 1, 2006, which would be within one (1) year of the date of publication of the notice of intent, this notice is being forwarded to the Administrative Rules Oversight Committee as a precaution, since this proposed rule amends the majority of Title 865. The Board expects that the rule can be approved by the governor by August 1, 2006. The two hundred fiftieth day after publication of the notice of intent to adopt this rule is January 2, 2006.

Your understanding of these circumstances is greatly appreciated. We look forward to receiving your response. If you need additional information, please do not hesitate to contact me at 234-2912. Thank you.

Sincerely,

Medana C. Davis
Staff Counsel

Cc:
Frances L. Kelly, Executive Director
Barbara McNutt, Chief Legal Counsel
Angela Smith Jones, Board Director

NOTICE OF DISAPPROVAL

TITLE 312 NATURAL RESOURCES COMMISSION
LSA Document #05-57

November 14, 2005

Steve Lucas, Division of Hearings Director
Indiana Natural Resources Commission
402 West Washington Street, Room W272
Indianapolis, Indiana 46204-2739

Re: LSA # 05-57

Dear Director Lucas:

The Natural Resources Commission ("Commission") submitted LSA Document number 05-57(F) to the Office of the Attorney General on September 30, 2005. On November 14, 2005, we discussed our concerns about the rule with you. Pursuant to Indiana Code section 4-22-2-32, our office has reviewed the rule and has determined that the rule should be disapproved as being inconsistent, with the requirements of the Administrative Orders and Procedures Act ("AOPA") at Indiana Code chapter 4-21.5-3.

As you noted, section 14-10-2-2 allows the Commission to appoint administrative law judges who are employees of the Commission. The section following section 14-10-2-2 states, "except as provided in IC 14-34-2-2 [regarding surface coalmining], the [C]ommission is the ultimate authority of the department under IC 4-21.5." Ind. Code § 14-10-2-3.

Pursuant to the provisions of AOPA, if an ALJ issues an order, the ultimate authority for the agency must issue a final order affirming, modifying or dissolving the ALJ's order. Ind. Code § 4-21.5-3-29(b). An ALJ who is by statute deemed the ultimate authority for the agency, such as an ALJ acting under the authority of 14-34-2-2, may issue what is considered the "final order" of an agency without additional review. However, "[i]f the [ALJ] is not the ultimate authority, the [ALJ's] order disposing of the proceeding becomes a final order when affirmed under [section 4-21.5-3-29]...." Ind. Code § 4-21.5-3-27(a).

Section 4-21.5-3-29(b) does provide that "the ultimate authority or its designee" may issue the final order. However, the statutory language makes clear reference to the "designee" and the ALJ as being two separate entities. The Commission's proposed rule allows the ALJ to also act as the Commission's designee in the issuance of final orders. It is the opinion of our office that designating the same ALJ who issued the proposed order to act as the Commission's designee in the issuance of a final order would bypass the necessary third person review of ALJ orders contemplated and required by AOPA. If the legislature envisioned the ALJ as potentially also being the designee for purposes of issuing the final order, parts of section 29 would not fully make sense. For example, it would not make sense for the ALJ acting as a designee to "remand the matter, with or without instructions, to an [ALJ] for further proceedings." Ind. Code § 4-21.5-3-29(b).

The status of the Commission's ALJs under 14-10-2-2 as employees of the Commission would not, in our opinion, automatically make the ALJs proper "designees" under section 29. As cumbersome as it may be, AOPA specifically provides for review of ALJ proposed orders by the ultimate authority who then must issue the final order. Under 14-10-2-3, the Commission is the ultimate authority for DNR except as expressly noted at 14-34-2-2. We presume that if the legislature had intended the ALJ to issue final orders in other cases besides those under 14-34-2-2, it would have expressly granted that authority as it did under 14-34-2-2. Additionally, in our opinion, default and dismissal orders issued by ALJs must also undergo final review by the ultimate authority or its designee.

Sincerely,

Gregory F. Zoeller
Chief Counsel - Advisory

Rebecca Walker
Deputy Attorney General

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #05-351(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ASBESTOS AND LEAD-BASED PAINT PROGRAMS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules 326 IAC 14-10, 326 IAC 18, and 326 IAC 23 concerning asbestos and lead-based paint license renewals. 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 14-10; 326 IAC 18; 326 IAC 23.

AUTHORITY: IC 4-21.5; IC 13-11-2-158; IC 13-14-8; IC 13-15; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6; IC 22-8-1.1.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

U.S. EPA identified asbestos as a hazardous air pollutant and promulgated the Asbestos National Emission Standards for Hazardous Air Pollution (NESHAP) in 40 CFR 61 on April 6, 1973. In 1976, Indiana was delegated the authority from U.S. EPA to enforce the NESHAP for asbestos.

In 1986, Congress enacted the Asbestos Hazard Emergency Response Act (the Act) that mandated a regulatory program to address asbestos hazards in schools. The Act required the U.S. EPA to develop an asbestos plan that provided for the training of persons performing asbestos-related work in schools and to obtain accreditation to demonstrate proficiency as a prerequisite for performing this work. The Act also required states to adopt a state accreditation program that was no less stringent than that described in the federal plan. In 1988, the air pollution control board (board) adopted 326 IAC 18. This new article incorporated the requirements of the federal plan by establishing training requirements and initiating a licensing program for those persons working in Indiana.

On November 28, 1990, Congress enacted the Asbestos School Hazard Abatement Reauthorization Act and expanded the accreditation procedures required for persons who work with asbestos-containing materials in public and commercial buildings as well as schools. In turn, the board expanded the NESHAP renovation and demolition program in 326 IAC 14-10 with specific state requirements and clarification of existing requirements. Continuing annual federal amendments to these rules have been incorporated into the board rules under 326 IAC 18.

House Enrolled Act 1181, enacted in 1997, required IDEM to establish a lead-based paint program to ensure that a person

conducting lead-based paint activities in certain specified housing and child-occupied facilities does so in a manner that protects the health of the building's occupants, especially children six (6) years of age and younger. This program ensures Indiana's compliance with 40 CFR 745, "Lead: Requirements for Lead-Based Paint Activities in Target Housing and Child Occupied Facilities; Final Rule (August 29, 1996) and the Toxic Substances Control Act, Section 402.

326 IAC 23 (Lead-based Paint Program) was added by the board in 1998 to require persons or contractors who engage in lead-based paint activities to obtain a license from IDEM by meeting certain requirements. The rule specifies record keeping, work practice standards, testing requirements, and establishes fees for licensing of individuals, contractors, and approval of training courses. The program is similar to the accreditation program for asbestos.

This rulemaking will provide clarification and standardization to the application, notification, and licensing procedures for the asbestos and lead-based paint programs. The department proposes to change the term "accreditation" to "license", correct rule citations to 329 IAC that have been repealed, and amend two (2) definitions in 326 IAC 14-10. Other amendments will restructure the definition section under 326 IAC 18 to mirror the format under 326 IAC 23 and add the department as a certificate holder on contractor insurance certificates. Additionally, notification procedures under 326 IAC 23 will be amended to include facsimile, add clearance examiner to the list of disciplines, and set standards for time lapses between courses. The proposed amendments will allow for better training of individuals involved in both asbestos and lead projects, thereby ensuring greater personal safety for themselves, co-workers, and the general public.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Add amendments to the asbestos NESHAP, asbestos management, and lead-based paint rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes. The amendments to the lead-based paint rules are federal rule requirements. The amendments to the asbestos rules are state only program clarifications. Both are federally authorized programs.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, for the lead-based paint program amendments.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. No amendments made to the 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? No.
- If it is a federal requirement, is it different from federal law? N/A
- If it is different, describe the differences.

Applicable Federal Law

This rulemaking is affected by the following federal laws: 40 CFR 61, National Emission Standards for Hazardous Air Pollutants, Subpart A (General Provisions) and Subpart M (National Emission Standards for Asbestos); 40 CFR 745, Lead-based Paint Poisoning Prevention in Certain Residential Structures; 40 CFR 763, Toxic Substances Control Act, Subpart E (Asbestos-containing Material in Schools) and Subpart G (Worker Protection rule); 29 CFR 1910.134, Occupational Safety and Health Administration (OSHA) Worker Respiratory Protection; 29 CFR 1926.1101, OSHA Occupational Exposure to Asbestos; and 29 CFR 1926.59, OSHA Hazard Communication Standard.

Potential Fiscal Impact**Potential Fiscal Impact of Alternative 1.**

No fiscal impact for Alternative 1.

Potential Fiscal Impact of Alternative 2.

No fiscal impact for Alternative 2.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf

IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04

100 N. Senate Avenue, W-041

Indianapolis, IN 46204-2251

317-232-8578

selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen

IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01

100 N. Senate Avenue, IGCN 1301

Indianapolis, IN 46204-2251

317-234-3386

elevenha@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Suzanne Whitmer, Rules Section, Office of Air Quality at (317) 232-8229 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.

- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#05-351(APCB) Asbestos/Lead-based Paint Licensing

Suzanne Whitmer Mail Code 61-50

c/o Administrative Assistant

Rules Development Section

Office of Air Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the Tenth Floor 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 February 1, 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).

Kathryn A. Watson, Chief

Air Programs Branch

Office of Air Quality

**TITLE 326 AIR POLLUTION CONTROL
BOARD****SECOND NOTICE OF COMMENT PERIOD**

LSA Document #05-267(APCB)

DEVELOPMENT OF NEW RULES CONCERNING LOWER-REID VAPOR PRESSURE FUEL IN CENTRAL INDIANA

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule at 326 IAC 13-4 concerning lower-Reid Vapor Pressure (RVP) fuel 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: October 1, 2005, Indiana Register (29 IR 148).

CITATIONS AFFECTED: 326 IAC 13-4.

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 eight-hour ozone National Ambient Air Quality Standard (8-hour standard). The affected counties are: Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby.

Ozone is not emitted directly into the air but is created by a chemical reaction between oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) in the presence of heat and sunlight. While ozone that occurs naturally in the stratosphere approximately 10 to 30 miles above the earth's surface forms a layer that protects life on earth from the sun's harmful rays, ground-level ozone contributes to a variety of health problems. Ozone is a lung irritant and can be harmful, especially for people with asthma or other respiratory problems. Ozone also damages plants and ecosystems and reduces visibility.

Ozone and the pollutants that form ozone, NO_x and VOC, can be transported hundreds of miles from the pollution sources. Motor vehicle exhaust, industrial emissions, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOC that help to form ozone. Sunlight and hot weather cause ground-level ozone to form in harmful concentrations in the air. As a result, ozone is known as a summertime air pollutant. Indiana's ozone season is April 1 to September 30.

A nonattainment designation triggers planning requirements for existing sources of air pollution, stricter requirements for certain types of new and expanding facilities that emit air pollution, and certain changes in transportation planning and funding and, potentially, additional clean air measures. Indiana must develop a plan by June 15, 2007, detailing the steps necessary to comply with the standard by the attainment date.

Although new national and regional controls, including the nitrogen oxides control rule for power plants, new diesel engine standards, and new diesel fuel standards, will help improve air quality in Central Indiana, additional controls may be necessary in order for the area to attain the standard.

IDEM is working with citizens, local government, businesses, 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). One of the regulatory measures considered, and the subject of this rulemaking, is implementing a lower Reid Vapor Pressure (RVP) fuel requirement in the nine (9) county Central Indiana region during certain months of the year. Currently, Central Indiana is supplied with gasoline with a RVP of 9.0 pounds per square inch (psi). IDEM proposes the use of a lower RVP gasoline of 7.0 psi to provide VOC reductions. Fuel with a lower RVP reduces VOCs by reducing hydrocarbon emissions from gasoline. These reductions could provide an annualized reduction of VOCs of up to nine hundred thirty-two (932) tons per year from on-road mobile sources alone. Additional reductions from other sources such as non-road equipment and portable containers have not been quantified yet.

State adoption of lower RVP gasoline requirements is controlled by Section 211(c)(4) of the Clean Air Act. This section prohibits states from requiring a different fuel or fuel additive if U.S. EPA has a federal program already in place. This preemption does not apply if the state control is identical to the federal control. U.S. EPA may approve a non-identical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the primary or secondary National Ambient Air Quality Standards (NAAQS) that the plan implements. U.S. EPA can approve a state fuel requirement as necessary only if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable. Since 1992 and in accordance with 40 CFR 80.27, most Indiana counties, including the nine Central Indiana counties, have been limited to a gasoline RVP of not greater than 9.0 psi during the high ozone seasons. Therefore, Indiana must satisfy the requirements of the waiver request provisions in order to have a lower RVP fuel rule approved into the SIP.

The waiver request requires the following information:

- Identification of the quantity of reductions needed to reach attainment.
- Identification of possible other control measures and the quantity of reductions each would achieve.
- Explanation in detail, with adequate factual support, of which of those identified control measures are considered unreasonable or impracticable.
- Demonstration that even with the implementation of all reasonable and practicable measures, the state would need additional emissions reductions for timely attainment, and the state fuel measure would supply some or all of such additional reductions.

IDEM will be compiling documentation to support a waiver request to U.S. EPA during the rulemaking process.

The Clean Air Act requires that states develop measures to bring nonattainment areas into attainment with the NAAQS. This rule is one measure to bring the Central Indiana area into attainment for the 8-hour ozone standard. In order to demonstrate attainment in Central Indiana by June 15, 2009, controls would need to be implemented by the summer of 2006 to provide three (3) years of data prior to the attainment date. As part of a strategy to reduce VOCs by five percent (5%), the CIAQAG recommended that IDEM consider a combination of regulatory control strategies that includes lower RVP gasoline. This rule has been initiated to complete the necessary rulemaking process as quickly as possible, even if the control cannot be in place prior to the start of the 2006 ozone season. The rule will be submitted to U.S. EPA for approval into the state implementation plan (SIP) and will guide air pollution control efforts in the nine (9) affected counties in Central Indiana.

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, Indiana is required to bring Central Indiana into attainment with the 8-hour ozone standard by June 15, 2009. In order to comply, Indiana must develop a plan by June 15, 2007 that describes the measures needed to meet the attainment date. Although there is no federal law that requires a lower RVP fuel, Indiana has determined through numerous discussions with interested parties that a cleaner fuel may be needed to meet the federal attainment requirement. 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

The American Petroleum Institute estimates the increase in gasoline prices would be between \$0.006 and \$0.03 per gallon for 7.0 psi RVP gasoline in the nine county Central Indiana region during the summer months. Based on two hundred sixty-two million three hundred thirty thousand seven hundred ten (262,330,710) gallons of gasoline (Indiana Department of Revenue, 2002) sold in the nine county Central Indiana area during June through mid-September of 2002, the average total annual increased cost could be up to seven million eight hundred sixty-nine nine hundred twenty-one dollars (\$7,869,921). The gasoline sold includes uses other than onroad vehicles, such as lawn and garden equipment, boats, agricultural equipment, and other nonroad gasoline engines. Some of the gasoline will also be bought by visitors and others living outside the nine (9) county region.

There may be initial costs to refiners that choose to supply lower RVP gasoline to Central Indiana, however, the cost depends on whether the refiner would have capital costs to begin refining a new fuel or would have process changes to supply a fuel already refined to a new region. The increased cost to refineries will ultimately be paid for by the consumer and are

included in the estimated increased price of the gasoline.

Public Participation and Workgroup Information

The Central Indiana Air Quality Advisory Group (CIAQAG) was established September 2003 to study alternatives for reducing ozone in Central Indiana to demonstrate attainment. This group is comprised of business, government officials, and citizens and has met several times since September 2003 to hear presentations, discuss regulatory and voluntary alternatives to reduce ozone, and make recommendations on alternatives appropriate in Central Indiana. These meetings are open to the public.

At this time, no additional workgroup is planned for this rulemaking, but the department is planning outreach efforts to affected parties during the course of the rulemaking and to provide compliance assistance. If you feel that a workgroup or other informal discussion on the rule is appropriate, or you would like information about the CIAQAG meetings, please contact Christine Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from October 1, 2005, through November 3, 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:

Improving Kids' Environment (IKE)

Indiana Petroleum Council (IPC)

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

Comment: Pressures on the U.S. refining sector, such as demand for petroleum products and the reduced yield for lower RVP fuels, must be taken into consideration by policy makers when considering the short-term and long-term implications of a new fuel control. (IPC)

Response: IDEM recognizes the challenges that the petroleum industry would face if a different fuel is required for Central Indiana for part of the year.

Comment: The current available modeling does not support the necessity of implementing a local fuel control in Central Indiana. The recent third round of modeling conducted by the Lake Michigan Air Directors Consortium (LADCO) clearly shows Central Indiana meeting attainment of the national ambient air quality standard (NAAQS) by the June 15, 2009 attainment deadline once emissions reductions for existing federal programs, such as the CAIR rule, NOx SIP Call, Tier II/low sulfur gasoline standards, and ultra-low sulfur diesel requirements gradually come on line. (IPC)

Response: Air quality modeling is an important tool that provides useful estimates of the reductions in emissions required to achieve air quality standards, but modeling results are only one input into the decision-making process used by IDEM to compile a weight of evidence demonstration for the State Implementation Plan (SIP). As of today, the modeling results indicate that Central Indiana will be close to attainment and

compliance with standards by the assigned deadline. However, the inventory and model are still under development and must be completed prior to making the final policy decisions and development of the SIP.

Comment: In order to obtain EPA approval for a fuel control for inclusion in a state implementation plan, a state must demonstrate to EPA that the control is necessary to achieve a national ambient air quality standard and that there are no reasonable and practicable non-fuel measures available that, if implemented, would bring the area into timely attainment. Selection of a fuel control to provide a margin of safety for a region which modeling demonstrates will reach attainment without the fuel control is in conflict with the Clean Air Act (CAA) requirement that states adopt fuel controls as a last resort, only after all other control measures have been ruled out. To date, the LADCO modeling suggests that attainment of the NAAQS can be met with existing regulatory controls. Therefore, IDEM does not have sufficient evidence to meet the test laid out by the CAA. (IPC)

Response: IDEM will be working with interested parties and U.S. EPA on the criteria for the fuel waiver during the rulemaking process. The inventory and model are still under development and must be completed prior to making the final policy decisions and development of the SIP. If the final modeling does not support the need for a fuel rule for Central Indiana, the rule will be withdrawn.

Comment: The cost effectiveness of a lower RVP fuel for Central Indiana comes into question when the control is sought as a safety net, rather than a control necessary for attainment of the NAAQS. Implementing control measures, such as degreasing, would seem to be a more prudent and cost-effective approach for the state when seeking a safety net. (IPC)

Response: At this time, IDEM believes a lower RVP fuel may be necessary for Central Indiana to reach attainment for the 8-hour ozone standard. Other control measures, including degreasing regulations, are also being pursued.

Comment: If new information resulting from further monitoring demonstrates that attainment can be achieved only by implementing a lower RVP fuel for Central Indiana, the proposed timeframe of June 15, 2006, for introduction of a lower RVP fuel into the Central Indiana market cannot be met by industry. A refinery needs a lead-time of one (1) to three (3) years from rule promulgation in order to supply a lower RVP fuel to a new market. (IPC)

Response: The draft rule includes a compliance date of June 1, 2007. IDEM will continue to work with the refiners and their representatives to meet the attainment deadlines to the extent possible, but may also include a compliance schedule in the rule for later deadlines, if necessary.

Comment: IDEM should give thoughtful consideration to burdens placed on regional refineries due to current or new fuel controls imposed in neighboring states. (IPC)

Response: IDEM has been involved in discussions about fuel requirements in neighboring states and understands the impact they could have on availability of certain fuels for Central

Indiana. IDEM will continue to work with the refiners and their representatives throughout this rulemaking to ensure that any fuel required for Central Indiana will minimize disruptions for fuel distribution in the Midwest.

Comment: IDEM should keep the current stakeholder group in place during upcoming rulemaking and implementation phases for ozone and fine particulate attainment planning. (IKE)

Response: IDEM has found the experience of working with the current workgroup to be beneficial to the ozone planning process and will continue to meet with the group throughout the process of identifying and implementing control measures for both ozone and fine particulate attainment efforts.

Comment: Encouraging motorists from the government and business sectors as well as the public to drive less, and more efficiently, and to reduce unnecessary emissions from idling should also be part of the clean air plan. (IKE)

Response: The CIAQAG has recommended that IDEM take all viable voluntary actions available to improve air quality, including the pursuit of transportation control measures that reduce vehicle miles traveled and single occupant vehicle trips. IDEM will continue to work with the Metropolitan Planning Organizations and the Transportation Control Measure Workgroup to identify and pursue all viable options from a voluntary and regulatory perspective.

For idling, IDEM and the Indianapolis Office of Environmental Services (OES) have an ongoing initiative to retrofit school and municipal vehicles and reduce long-term idling from school, municipal, and ultimately private fleets. Between complete and planned IDEM and OES retrofit projects, a minimum of 900 diesel powered vehicles will be retrofitted by the end of 2006.

As additional funding becomes available, IDEM will work with OES and other organizations to identify opportunities for further projects to improve air quality in Central Indiana.

Comment: It is appropriate to explore a clean fuel option for the Central Indiana region. The clean fuel programs in Clark and Floyd Counties and in Northwest Indiana have been successful in contributing to cleaner air in a fair manner with a minimum burden on motorists or supply complications. Another advantage to a clean fuel program is that other equipment that runs on gasoline, such as lawn mowers, will also have reduced emissions. The recent national events in the fuel market may be relevant to development of a clean fuel rule; those issues should be thoroughly explored during the rulemaking process. (IKE)

Response: IDEM agrees that there are advantages to a clean fuel program in Central Indiana. It has not yet been possible to quantify the reductions that would be gained from the use of a cleaner fuel in non-mobile sources, however, further modeling should provide more information. IDEM recognizes the recent national events impacting the fuel market and will continue to consider those impacts during the rulemaking process.

Comment: It is important for IDEM to work closely with U.S. EPA on the demonstration that will be needed at the federal level to achieve approval of a Central Indiana clean fuel program to assure that a rule, if adopted by the Air Pollution Control Board, will be approvable. (IKE)

Response: IDEM has already initiated discussions with U.S. EPA in preparation for the necessary fuel waiver request. These discussions will continue through the rulemaking process to ensure any rule adopted satisfies the fuel waiver requirements.

Comment: The specific provisions of the rule (e.g., 7.0 vs. 7.8 RVP and timing) should be developed in a way that will maximize the reductions from this program as much as feasible given other considerations that should be explored during the rulemaking process. (IKE)

Response: For purposes of the Second Notice of Comment Period, IDEM is proposing a lower RVP fuel of 7.0 psi for Central Indiana to be implemented in 2007. These criteria will be evaluated further during the rulemaking process for feasibility based on additional modeling information and specific comments from interested parties.

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:

#05-267(APCB) Central Indiana Fuel 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 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 February 1, 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).

DRAFT RULE

SECTION 1. 326 IAC 13-4 IS ADDED TO READ AS FOLLOWS:

Rule 4. Control of Gasoline Reid Vapor Pressure in Central Indiana

326 IAC 13-4-1 Applicability

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

Sec. 1. This rule applies to all the following:

(1) Refiners, importers, carriers, or terminals who supply gasoline for use in:

- (A) Boone;
- (B) Hamilton;
- (C) Hancock;
- (D) Hendricks;
- (E) Johnson;
- (F) Madison;
- (G) Marion;
- (H) Morgan; and
- (I) Shelby;

counties between May 1 and September 15 of each calendar year beginning in 2007.

(2) Retail stations and other end users who sell or dispense gasoline in:

- (A) Boone;
- (B) Hamilton;
- (C) Hancock;
- (D) Hendricks;
- (E) Johnson;
- (F) Madison;
- (G) Marion;
- (H) Morgan; and
- (I) Shelby;

counties between June 1 and September 15 of each calendar year beginning in 2007.

(Air Pollution Control Board; 326 IAC 13-4-1)

326 IAC 13-4-2 Definitions

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

Sec. 2. The definitions in IC 13-11 and 326 IAC 1-2 and the following definitions apply throughout this rule unless expressly stated otherwise:

(1) "Alternate fuel" means any of the following fuels or power sources:

- (A) Methanol.
- (B) Ethanol.
- (C) Other alcohols containing eighty-five percent (85%) or more by volume of such alcohol with gasoline or other fuels.
- (D) Natural gas.
- (E) Liquefied petroleum gas.
- (F) Hydrogen.
- (G) Electricity.
- (H) Diesel fuel.

(2) "Carrier" means any distributor who transports or stores or causes the transportation or storage of gasoline without:

- (A) taking title to or otherwise having any ownership of the gasoline; and
- (B) altering the quality or quantity of the gasoline.

(3) "Compliant fuel", for purposes of this rule, means seven and zero-tenths (7.0) pounds per square inch (psi) lower RVP gasoline, federal reformulated gasoline, or

ethanol blended low RVP gasoline as described in section 5 of this rule.

(4) "Consumer" means any person who:

(A) is the ultimate consumer of gasoline; or

(B) purchases fuel for use in a fleet of motor vehicles.

(5) "Distributor" means any person who transports, stores, or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet.

(6) "Ethanol blender" means a person who:

(A) owns;

(B) leases;

(C) operates;

(D) controls; or

(E) supervises;

an ethanol blending facility.

(7) "Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(8) "Gasoline distribution network" means all persons involved with the distribution of gasoline:

(A) starting with the refiner; and

(B) ending with the retailer or wholesale purchaser-consumer.

(9) "Importer" means a person who imports gasoline or gasoline blending stocks or components from a foreign country into the United States.

(10) "Low RVP gasoline" means any gasoline that has a Reid vapor pressure of seven and zero-tenths (7.0) psi or less per gallon as determined in accordance with the appropriate sampling and testing methodologies set forth in 40 CFR 80*.

(11) "Noncompliant fuel" means any motor fuel that is not an alternate or a compliant fuel.

(12) "Psi" means pounds per square inch absolute.

(13) "Refiner" means any person who:

(A) owns;

(B) leases;

(C) operates;

(D) controls; or

(E) supervises;

a refinery that produces gasoline for use in an area where low RVP gasoline is required.

(14) "Refinery" means a plant at which gasoline is produced.

(15) "Reid vapor pressure" or "RVP" means the absolute vapor pressure of gasoline or gasoline/ethanol blends as determined by the appropriate sampling and testing methodologies set forth in 40 CFR 80*.

(16) "Reseller" means any person who:

(A) purchases gasoline; and

(B) resells or transfers it to a retailer or a wholesale purchaser-consumer.

(17) "Retailer" means any person who:

(A) owns;

(B) leases;

(C) operates; or

(D) supervises;

a retail outlet.

(18) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.

(19) "Wholesale purchaser-consumer" means any person who:

(A) is the ultimate consumer of gasoline; and

(B) purchases or obtains gasoline from a distributor for use in motor vehicles.

*Copies of the Code of Federal Regulations (CFR) referenced may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or 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 13-4-2*)

326 IAC 13-4-3 General requirements

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

Affected: IC 13-17

Sec. 3. Beginning in 2007, and each calendar year thereafter, no refiner, importer, distributor, reseller, carrier, or retailer shall do either of the following:

(1) Sell, offer for sale, dispense, supply, offer for supply, or transport for use in:

(A) Boone;

(B) Hamilton;

(C) Hancock;

(D) Hendricks;

(E) Johnson;

(F) Madison;

(G) Marion;

(H) Morgan; and

(I) Shelby;

counties gasoline that is not an alternate fuel or a compliant fuel as defined in section 2 of this rule during the applicable compliance period as defined in section 1 of this rule.

(2) Blend, mix, store, or transport or allow blending, mixing, storing, or transporting of compliant fuel with noncompliant fuel during the applicable compliance period as defined in section 1 of this rule.

(*Air Pollution Control Board; 326 IAC 13-4-3*)

326 IAC 13-4-4 Record keeping requirements

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

Affected: IC 13-17

Sec. 4. (a) A person may not sell, dispense, or transfer gasoline intended for use in Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby counties during the applicable time period as defined in section 1 of this rule without a transfer document that

contains the information listed in this subsection unless the gasoline is being dispensed into motor vehicles or purchased by a consumer at a retail or wholesale outlet. This document shall accompany every shipment of gasoline after it has been dispensed by the refinery. The document shall contain, at a minimum, the following information:

- (1) The date of all transfers.
- (2) The volume of the gasoline that was transferred.
- (3) The volume and percentage of ethanol if ethanol blended, with a date and location of blending.
- (4) The location and time of transfer.
- (5) A statement certifying that the gasoline:
 - (A) has an RVP of seven and zero-tenths (7.0) psi or less per gallon; or
 - (B) is ethanol blended.

(b) Any person who manufactures, refines, transports, stores, or sells compliant fuel that is intended for use in:

- (1) Boone;
- (2) Hamilton;
- (3) Hancock;
- (4) Hendricks;
- (5) Johnson;
- (6) Madison;
- (7) Marion;
- (8) Morgan; and
- (9) Shelby;

counties during the applicable time period as described in section 1 of this rule shall ensure that it is segregated from noncompliant fuel and labeled at all times.

(c) Each person in the gasoline distribution network shall maintain records containing the compliance information required by this rule. These records shall be retained by the regulated parties for at least two (2) years from the date of creation or receipt. (*Air Pollution Control Board; 326 IAC 13-4-4*)

326 IAC 13-4-5 Ethanol blended gasoline

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

Sec. 5. Gasoline containing ethanol may exceed the seven and zero-tenths (7.0) RVP limit by not more than one (1) psi if the gasoline meets all of the following requirements:

- (1) The gasoline must contain denatured, anhydrous ethanol.
- (2) The concentration of anhydrous ethanol, excluding the required denaturing agent, must be:
 - (A) at least nine percent (9%); and
 - (B) not more than ten percent (10%);
 by volume, of the gasoline.
- (3) The ethanol content of the gasoline shall be determined by use of one (1) of the testing methods specified in 40 CFR 80, Appendix F*. The maximum ethanol content of gasoline shall not exceed any applicable waiver conditions under Section 211(F)(4) of the Clean Air Act, as amended.

(4) Each invoice, loading ticket, bill of lading, delivery ticket, and other document that accompanies a shipment of gasoline containing ethanol shall:

- (A) contain a statement that the gasoline being shipped contains ethanol; and
- (B) list the type and volume percentages of the concentration of ethanol in that gasoline.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 13-4-5*)

326 IAC 13-4-6 Compliance and test methods

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

Sec. 6. (a) Compliance with the seven and zero-tenths (7.0) psi standard shall be determined by use of one (1) of the sampling and testing methods specified in this section. Any sampling or testing of gasoline required by this rule shall be accomplished as follows:

- (1) Sampling of gasoline for the purpose of determining compliance with this rule shall be conducted in accordance with 40 CFR 80, Appendix D*.
- (2) Testing of gasoline for purposes of determining compliance with this rule shall be conducted in accordance with 40 CFR 80, Appendix E*.

(b) Upon presentation of credentials, the:

- (1) refiner;
- (2) importer;
- (3) distributor;
- (4) reseller;
- (5) carrier; or
- (6) retailer;

to whom this rule applies shall allow the commissioner, or an authorized representative of the commissioner, to sample or test gasoline in accordance with this section.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 13-4-6*)

326 IAC 13-4-7 Violations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-14
Affected: IC 13-14-2-6; IC 13-17

Sec. 7. Failure to comply with any provision of this article

constitutes a violation of this article and is subject to the provisions of IC 13-14-2-6 and IC 13-30. (*Air Pollution Control Board; 326 IAC 13-4-7*)

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 May 3, 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 a new rule at 326 IAC 13-4 concerning lower-RVP fuel in Central Indiana.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

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

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204

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

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

CONTINUATION OF FIRST NOTICE #05-167(SWMB)

AMENDMENTS TO 329 IAC 10-20 AND 329 IAC 10-39 CONCERNING SOLID WASTE LAND DISPOSAL FACILITIES; FINANCIAL RESPONSIBILITY AND ANNUAL REVIEW AND ANNUAL SURVEY RESULTS

PURPOSE OF NOTICE

A first notice published in the Indiana Register at 28 IR 3060

proposed to amend 329 IAC 10-39 on financial assurance mechanisms to clarify that only a trust fund can be funded annually and that the annual payments can only be for the duration of the initial permit or over the remaining life of the facility, whichever is shorter. The post closure must be fully funded before waste is placed. It also had proposed to amend 329 IAC 10-39-2(c) to change the date of the annual financial review from the anniversary of the permit to a set date of February 15 each year. This is the date the annual survey results must be submitted. This continuation of the first notice now asks for comment on clarifying language that post closure funding, for any mechanism but trust fund, be appropriately fully funded based on a formula that takes into account the acreage that will be certified to begin placing waste. This continuation also seeks comment on 329 IAC 10-20 regarding changing the annual survey (fly-over) to between January 1 to March 30, with submittal of both the annual financial review and the annual survey to be every June 15.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 10-20-24; 329 IAC 10-39-2; 329 IAC 10-39-3.

AUTHORITY: IC 4-22-2; IC 13-14-9; IC 13-14-8-1; IC 13-14-8-2; IC 13-15-2; IC 13-19-3-1; IC 13-30-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

This rulemaking involves changes to the trust fund rule language to only allow annual payments for trust funds and to require the trust fund to be fully funded within the term of the initial permit or the remaining life of the MSWLF, whichever is shorter. In addition, the annual financial review and the annual survey (flyover) results both are to be submitted on the same date each year.

The changes regarding the trust fund financial assurance mechanism are being proposed to protect the state of Indiana financially. If a landfill goes bankrupt before the post-closure is fully funded, the State could be left with post-closure costs. The proposed changes to submit an annual financial review are for the convenience of the regulated community. This rule is currently not as stringent as the federal regulation regarding trust funds and the allowance for other mechanisms to be annually funded. The rule is also unclear and inconsistent.

ADDITIONAL SUBJECT MATTER

A workgroup made up of industry representatives, consultants, and IDEM staff met to discuss these rule changes. These additional changes were suggested by the workgroup. In addition to the subject matter listed in the first notice of comment period at 28 IR 3060, comments are requested on the following:

- (1) Allowing post closure funding, for other than the trust fund, to be appropriately fully funded based on a formula that

takes into account the acreage that will be certified to begin placing waste. All post closure funding would be in place for an area certified to begin fill prior to any filling taking place. A formula would be used to determine the amount necessary. Costs would either be listed as fixed or not fixed for purposes of the formula.

(2) Changing the annual fly-over to January 1 to March 30, with submittal of both the annual financial review and the annual survey to be June 15.

Alternatives to be Considered Within the Rulemaking

Alternative 4. (See 28 IR 3060, July 1, 2005, for other alternatives) Allowing post closure funding, for other than the trust fund, to be appropriately fully funded based on a formula that takes into account the acreage that will be certified to begin placing waste. A formula would be used to determine the amount necessary. Changing the annual survey (fly-over) to between January 1 to March 30, with submittal of both the annual financial review and the annual survey to be June 15.

Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.

Is this alternative imposed by federal law or is there a comparable federal law? Yes, in part, funding changes comport with federal law.

If it is a federal requirement, is it different from federal law? It is the same as the federal requirements.

If it is different, describe the differences.

Applicable Federal Law 40 CFR 258.70-258.74 prescribes the requirements for the financial assurance and financial responsibility required under the federal regulations. This regulation sets the standards for financial assurance for closure, post-closure and corrective action for municipal solid waste landfills. It also provides the allowable mechanisms for financial assurance. The requirement to fully fund a trust fund over the term of the initial permit or over the remaining life of the landfill unit, whichever is shorter, is a federal regulation at 40 CFR 258.74(a)(2). Also, annual payments are only allowed in the federal rules for trust funds under 40 CFR 258.74(a)(3).

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 4. Regarding the changes to the post closure funding, there would be no additional cost to the regulated community as these conforming amendments are already required by federal regulations. The regulated community is not required to choose a trust fund as their financial assurance mechanism but has a choice of several mechanisms. Regarding the changes to the submittal date of the annual review, there should be no additional costs as this is already required to be submitted and this rule change merely changes the date for submittal.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small

businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf

IDEM Compliance and Technical Assistance Program

OPPTA - MC60-04

100 N. Senate Avenue, W-041

Indianapolis, IN 46204-2251

(317) 232-8578

selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen

IDEM Small Business Assistance Program Ombudsman

External Affairs - MC50-01

100 N. Senate Avenue, IGCN 1301

Indianapolis, IN 46204-2251

(317) 234-3386

elevenha@idem.in.gov

Public Participation and Workgroup Information

A workgroup has been meeting regarding this rulemaking. If you are interest in being a member of this workgroup, please contact Lynn West, Rules, Outreach and Planning Section, Office of Land Quality at (317) 232-3593 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life, or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#05-167(SWMB) [FA Change Rule]

Marjorie Samuel

Rules, Planning and Outreach Section
Office of Land Quality
Indiana Department of Environmental Management
Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Land Quality's Rules, Outreach and Planning Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 30, 2006.

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

Bruce H. Palin
Assistant Commissioner
Office of Land Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

CONTINUATION OF FIRST NOTICE

LSA Document #05-296(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES AT 329 IAC 10 CONCERNING CONSTRUCTION/DEMOLITION WASTE AND CERTAIN PERMITTING REQUIREMENTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at 329 IAC 10 concerning construction/demolition waste and certain permitting requirements. The First Notice asked for comments on amendments to rules at 329 IAC 10 concerning unrecognizable, crushed construction/demolition waste and changes to permitting requirements mandated under Senate Enrolled Act 279-2005. In addition to the subject matter in the First Notice, this Continuation of First Notice proposes further amendments to Article 10 relating to New Source Performance Standards. These changes are solely for the purpose of maintaining consistency with state and federal air pollution regulations, specifically to clarify municipal solid waste landfill (MSWLF) owner/operator responsibilities for closure and post closure requirements for gas extraction systems. IDEM seeks comment on the affected citations listed and any other provisions of Title

329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 10.

AUTHORITY: IC 4-22-2; IC 13-14-8-1; IC 13-14-8-2; IC 13-14-9; IC 13-15-2; IC 13-19-3-1; IC 13-19-4-1; IC 13-19-4-6; IC 13-30-2.

ADDITIONAL SUBJECT MATTER

In addition to the subject matter listed in the first notice of comment period published in the November 1, 2005 Indiana Register at 29 IR 693, comments are requested concerning language clarifying MSWLF requirements that reference and maintain consistency with state air pollution rules at 326 IAC 12-1-1(b)(1) that incorporate federal regulations at 40 CFR Part 60 Subpart Www and Cc.

Additional Alternatives to be Considered Within the Rulemaking

Alternative 4. In 329 IAC 10, add a reference to the Air Pollution Control Board rules regarding New Source Performance Standards at 326 IAC 12-1-1(b)(1), which incorporate by reference the federal rules at 40 CFR 60 Subparts WWW and Cc.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes. 40 CFR Part 60 Subparts WWW and Cc.
- If it is a federal requirement, is it different from federal law? It is the same as the federal requirements.
- If it is different, describe the differences. N/A.

Alternative 5. Make no reference to air pollution standards so there is no reference or clarification in the rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. The state and federal New Source Performance Standards are not referenced.

Applicable Federal Law

40 CFR 60 Subparts WWW and Cc

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 4.

No fiscal impact as these provisions are already incorporated by reference under rules of the Air Pollution Control Board required under federal law.

Potential Fiscal Impact of Alternative 5.

No fiscal impact.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance

program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf

IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04

100 N. Senate Avenue, W-041

Indianapolis, IN 46204-2251

(317) 232-8578

selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen

IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01

100 N. Senate Avenue, IGCN 1301

Indianapolis, IN 46204-2251

(317) 234-3386

elevenha@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Kiran Verma, Rules, Outreach, and Planning Section, Office of Land Quality at (317) 232-8899 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:

#05-296(SWMB) [Amendments to 329 IAC 10 for C/D waste

and changes to permitting requirements - Continuation of First Notice]

Marjorie Samuel

Rules, Planning and Outreach Section (MC 65-45)

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Land Quality's Rules, Outreach and Planning Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 31, 2006.

Additional information regarding this action may be obtained from Kiran Verma, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-8899 or (800) 451-6027 (in Indiana).

Bruce H. Palin

Assistant Commissioner

Office of Land Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD

LSA Document #05-182(SWMB)

DEVELOPMENT OF NEW RULES CONCERNING INSPECTION AND CLEANING OF PROPERTIES CONTAMINATED BY CHEMICALS USED IN THE ILLEGAL MANUFACTURE OF A CONTROLLED SUBSTANCE

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules at 329 IAC 17 concerning the inspection and cleanup of properties contaminated by chemicals used in the illegal manufacture of a controlled substance. This rulemaking is required by IC 13-14-1-15. This rule would include the following subject matter:

- Requirements to have a contaminated property decontaminated and inspected before reoccupying or reusing the property or transferring any interest in the property to another person.
- Qualification and certification of persons who inspect and clean contaminated property.

- Standards for inspection and decontamination of contaminated property.

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: August 1, 2005, Indiana Register (28 IR 3359).

CITATIONS AFFECTED: 329 IAC 17.

AUTHORITY: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

IC 13-14-1-15 (Public Law 192-2005, SECTION 6) requires the Indiana Department of Environmental Management (IDEM) to maintain a list of persons certified to inspect and clean property that is contaminated by a contaminant, including chemical reagents and precursors used in the illegal manufacture of illegal drugs. IDEM may establish qualifications and expertise required for certification as a person qualified to inspect and clean contaminated properties. In addition, P.L. 192-2005 expanded the definition of “contaminant” in IC 13-11-2-42 to include “chemicals used in the illegal manufacture of a controlled substance (as defined in IC 35-48-1-9) or an immediate precursor (as defined in IC 35-48-1-17) of a controlled substance.”

IC 13-14-1-15 requires IDEM to adopt rules to implement these requirements and authorizes IDEM to regulate inspection and cleaning of property contaminated by chemicals used in the illegal manufacture of a controlled substance.

Currently, Indiana has no statutory or regulatory requirement for owners, operators, lessors, or persons in charge of real property to clean or decontaminate that property if it is found to have been used for the illegal manufacture of controlled substances. There is also no explicit requirement for the property owner to disclose that information when renting or selling the property. As a result, prospective buyers and lessees must rely on other sources of information and have no way to assure themselves that the property has been properly decontaminated.

When use of the property for illegal drug manufacturing is discovered, the Indiana State Police or other law enforcement agency with responsibility for dismantling the laboratory and investigating the incident records the facts about the incident and the property and provides that information to other agencies as required by law. That information is available to the public, including prospective buyers and lessees.

However, none of those agencies has either the resources or the responsibility to ensure the property is properly cleaned and is safe to reoccupy. As a result, there is no formal means for a property owner to demonstrate that the property has been

rendered safe and the defect has been corrected. This rule is intended to provide a uniform, credible means to allow the owner of a contaminated property to demonstrate that the property has been properly decontaminated and is safe to reoccupy.

This draft rule was developed in consultation with the Indiana State Department of Health (ISDH), the Indiana State Police (ISP), the Indiana Criminal Justice Institute, the Fort Wayne-Allen County Department of Health, the Hamilton County Health Department, and the Boone County Solid Waste Management District. IDEM thanks these agencies for their assistance.

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).

NIFL Element A. 329 IAC 17-3-1: Property owners would be required to decontaminate their contaminated property using a person certified to decontaminate under this article before reoccupying the property or transferring the property to another person. A person who transfers contaminated property must disclose the previous existence of an illegal drug manufacturing operation at that property and provide a copy of the certificate of decontamination to the other party, prior to transferring their interest in that property.

(1) Dwellings and other real property in Indiana are being contaminated with chemicals used in the illegal manufacture of controlled substances. This contamination presents a serious health threat to children and adults who will occupy these dwellings. It also results in reduced property value and marketability of the contaminated properties and surrounding properties. Approximately 1000 of these properties were reported to Indiana law enforcement agencies in 2005. IC 13-14-1-15 requires IDEM to maintain a list of contractors who are qualified to inspect and clean property contaminated by chemicals used in the illegal manufacture of controlled substances. IC 13-14-1-15 also authorizes IDEM to develop standards for inspection and cleaning of contaminated property. There are no corresponding federal requirements.

(2) The potential economic impact of this element is estimated to be up to \$5,000,000 as described below under “Potential Fiscal Impact.”

(3) IDEM relied on information provided by the Indiana State Department of Health, the Indiana State Police, the Indiana Criminal Justice Institute, the Fort Wayne-Allen County Department of Health, the Hamilton County Health Department, the Boone County Solid Waste Management District, and Ferguson Harbour, Inc.

NIFL Element B. A person who supervises decontamination of property used for illegal manufacture of controlled substances would have to be certified by IDEM and meet certain training requirements. The certified person would be required to assess the property to determine the types and amounts of contamination present, supervise decontamination of the property, inspect

the property for remaining contaminants to ensure the contaminant levels are below the decontamination levels specified in the rule, and certify to the property owner in writing that decontamination is complete and the property met the decontamination levels at the time of the inspection. Persons who apply for certification under this rule would be required to attend training specific to decontamination of property contaminated by chemicals used in the illegal manufacture of controlled substances provided by IDEM with assistance from ISDH and ISP. This training would be provided as often as required to meet demand and could be provided at different locations.

(1) There are currently no requirements or standards for certification of persons to inspect and clean property that has been contaminated by chemicals used in the illegal manufacture of controlled substances. This lack of standards results in property owners being unable to ensure that their properties will be properly decontaminated, and potential lessees or purchasers being unable to assure themselves that a property is safe to occupy. There are no corresponding federal standards.

(2) The cost of this element cannot be accurately estimated at this time but is expected to be limited to salaries and travel expenses of supervisors who must obtain certification under this rulemaking.

(3) IDEM relied on information provided by the Indiana State Department of Health, the Indiana State Police, the Indiana Criminal Justice Institute, the Fort Wayne-Allen County Department of Health, the Hamilton County Health Department, the Boone County Solid Waste Management District, and Ferguson Harbour, Inc.

Potential Fiscal Impact

The potential fiscal impact of this rulemaking to owners or operators of contaminated properties cannot be accurately estimated at this time. The Indiana State Police estimates that they will be notified of approximately 1000 illegal drug manufacturing operations in 2005, and anticipate a similar number in 2006.

One cleanup contractor estimated a cost of up to \$15,000 per structure to properly decontaminate a structure contaminated with methamphetamine or another illegal controlled substance, with a median cost of about \$5,000. The proposed rule would allow a property owner to demolish the structure without decontamination, and it is unknown how many property owners would exercise that option. Based on this information, the potential cost to owners of contaminated properties could be as much as \$5,000,000 per year. It is not possible to determine how many property owners would elect to demolish the contaminated property without decontaminating it, and what the economic effect of exercising that alternative would be.

No studies of the health effects of living in a dwelling contaminated by methamphetamine or other illegal controlled were available during development of this rule. IDEM has no information on the economic benefits of decontaminating these dwellings, however it is intuitive that reducing or eliminating these contaminants in dwellings will produce tangible health and

economic benefits to the adults and children who will occupy these structures by preventing adverse health effects from contact with illegal drugs and chemicals used to manufacture illegal drugs.

No information is currently available on the effect on surrounding property values of reducing the number of structures that become abandoned or reduced in value by being used as illegal drug manufacturing operations. IDEM expects the requirement to properly decontaminate these contaminated properties to reduce the number of abandoned and unsafe properties and have a tangible positive economic impact on surrounding properties.

The number of persons who would apply for certification under this rulemaking is unknown at this time. The costs to these persons and contractors to become certified would be the costs to attend the required training provided by ISP and IDEM, including salaries and travel costs. IDEM is requesting specific information on these costs for training delivered at a central location and for training provided at locations closer to the applicants.

The potential economic impact of this rulemaking on regulated entities will exceed \$500,000 and the rule will be submitted to the Legislative Services Agency for analysis as required by IC 4-22-2-28. IDEM is requesting specific information on the potential economic impact, including the economic benefits, of this rulemaking.

Public Participation and Workgroup Information

IDEM may establish an external workgroup to discuss issues involved in this rulemaking. If you wish to participate in the workgroup, please submit your name, mailing address, telephone number, e-mail address, and the area(s) of interest you wish to represent to:

#05-182(SWMB) [Inspection and Cleanup of Contaminated Property]

Marjorie Samuel

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204-2251

If too many applications are received to form a functional work group, the department will select a representative group from the applications on file.

The formation of this work group will be announced on IDEM's rulemaking website: <http://www.in.gov/idem/rules/>.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or submit suggestions related to the workgroup process, please contact Steve Mojonner, Rules, Planning and Outreach Section, Office of Land Quality at (317) 233-1655 or (800) 451-6027 (in Indiana). Please provide your name, phone number and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking. A list of workgroup members and the interests they represent will be provided on request.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from August 1, 2005, through August 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:

Michael D. Morris, EHS Technology Group, LLC (EHS)
Following is a summary of the comments received and IDEM's responses thereto:

Comment: The commentor asked to be included in the workgroup. (EHS)

Response: IDEM concurs and will add the commentor to an external workgroup if one is formed.

REQUEST FOR PUBLIC COMMENTS

This notice solicits 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:

#05-182(SWMB) [Inspection and Cleanup of Contaminated Property]

Marjorie Samuel
Office of Land Quality
Indiana Department of Environmental Management
100 North 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 East, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by February 1, 2006.

Additional information regarding this action may be obtained from Steve Mojonnier of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655. Additional information on this rule may also be found on IDEM's rulemaking website at <http://www.in.gov/idem/rules/>.

DRAFT RULE

SECTION 1. 329 IAC 17 IS ADDED TO READ AS FOLLOWS:

ARTICLE 17. INSPECTION AND REMEDIATION OF CONTAMINATED PROPERTY

Rule 1. General

329 IAC 17-1-1 Applicability

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 1. This rule applies to the following:

(1) The owner, lessee, operator, or other person in control of a contaminated property.

(2) A person who applies for and obtains certification to inspect and clean contaminated property.

(Solid Waste Management Board; 329 IAC 17-1-1)

Rule 2. Definitions

329 IAC 17-2-1 Applicability

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-11-2

Sec. 1. The definitions in IC 13-11-2 apply throughout this rule. In addition, the definitions in this rule apply throughout this article. (Solid Waste Management Board; 329 IAC 17-2-1)

329 IAC 17-2-2 "Certified person" defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-11-2-158

Sec. 2. "Certified person" means a person, as defined in IC 13-11-2-158(a), who has been certified by the department under this rule as qualified to supervise decontamination of contaminated property and certify that the property meets the decontamination levels specified in 329 IAC 17-4-6, Table 1. A person is certified to supervise decontamination of a contaminated property when the department places that person's name on the list of certified persons. (Solid Waste Management Board; 329 IAC 17-2-2)

329 IAC 17-2-3 "Chemicals used in the illegal manufacture of a controlled substance" defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 35-48-1-17; IC 35-48-4-14.5

Sec. 3. "Chemicals used in the illegal manufacture of a controlled substance" means all substances used in or resulting from the illegal manufacture of controlled substances. The term includes the following:

(1) Illegally manufactured controlled substances.

(2) Immediate precursors as defined in IC 35-48-1-17.

(3) Chemical reagents and precursors as defined in IC 35-48-4-14.5.

(4) Other substances used in or resulting from the illegal manufacture of controlled substances.

(Solid Waste Management Board; 329 IAC 17-2-3)

329 IAC 17-2-4 "Contaminated property" defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 4. "Contaminated property" means:

- (1) real property; or
- (2) a vehicle;

that has been identified by a state or local law enforcement agency as having been used for illegal manufacture of a controlled substance and can reasonably be expected to be contaminated with chemicals used in the illegal manufacture of a controlled substance. A property is no longer a contaminated property when the certificate of decontamination is issued. (*Solid Waste Management Board; 329 IAC 17-2-4*)

329 IAC 17-2-5 "Decontaminate" or "decontamination" defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 5. "Decontaminate" or "decontamination" means all activities related to assessment and removal of chemicals used in the illegal manufacture of a controlled substance from a contaminated property that occur after the operation used for illegal manufacture of a controlled substance has been dismantled by a law enforcement agency or its agents. (*Solid Waste Management Board; 329 IAC 17-2-5*)

329 IAC 17-2-6 "Illegally manufactured controlled substance" defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 35-48-1-9

Sec. 6. "Illegally manufactured controlled substance" means a controlled substance, as defined in IC 35-48-1-9, that has been illegally manufactured. (*Solid Waste Management Board; 329 IAC 17-2-6*)

329 IAC 17-2-7 "Inspect" or "inspection" defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 7. "Inspect" or "inspection" means all activities described in 329 IAC 17-4-6. The term does not include activities of any of the following:

- (1) State and local law enforcement agencies.
- (2) Hazardous materials responders.
- (3) Local health departments.
- (4) County health departments.
- (5) City health departments.

(*Solid Waste Management Board; 329 IAC 17-2-7*)

329 IAC 17-2-8 "Manufacture" defined

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 35-48-1-18

Sec. 8. "Manufacture" has the meaning set forth in IC 35-48-1-18. (*Solid Waste Management Board; 329 IAC 17-2-8*)

Rule 3. Decontamination of Contaminated Property

329 IAC 17-3-1 Decontamination by certified person required

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 9-22

Sec. 1. (a) The owner, lessee, operator, or other person in control of a contaminated property shall have that contaminated property decontaminated by a certified person and must obtain a certificate of decontamination under 329 IAC 17-4-7 before:

- (1) reoccupying or reusing the property or allowing it to be reoccupied or reused; or
- (2) transferring any interest in the property to another person;

except as provided in subsection (d) or (e).

(b) The owner, lessee, operator, or other person in control of a contaminated property shall not transfer their interest in that property to another person until the transferor of the property has:

- (1) disclosed in writing to each of the other parties to the transfer of property the existence on that property of an operation that:

(A) illegally manufactured controlled substances; and

(B) came to the notice of a law enforcement agency; and

- (2) provided to each of the other parties to the transfer of property a copy of the certificate of decontamination and all analytical reports attached to the certificate of decontamination.

(c) The owner, lessee, operator, or other person in control of a contaminated property shall not decontaminate or inspect property controlled by that person.

(d) A contaminated property that is a structure may be demolished and disposed of in accordance with 329 IAC 10 without complying with subsections (a) and (b).

(e) A vehicle may be disposed of under IC 9-22 without complying with subsection (a). (*Solid Waste Management Board; 329 IAC 17-3-1*)

329 IAC 17-3-2 Decontamination by uncertified person prohibited

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. (a) A person who is not certified by the department to decontaminate or inspect contaminated property shall not:

- (1) supervise decontamination of a contaminated property;
- (2) inspect a contaminated property;
- (3) issue a certificate of decontamination; or
- (4) advertise to decontaminate contaminated properties.

(b) A certificate of decontamination issued by a person

who is not certified by the department as a certified person is not valid to certify decontamination of a contaminated property. (*Solid Waste Management Board; 329 IAC 17-3-2*)

Rule 4. Certified Person

329 IAC 17-4-1 Who must be certified

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 1. (a) The person who performs any of the activities listed in section 5 of this rule must be certified under this article.

(b) A person who:

- (1) is not a supervisor; and
- (2) decontaminates a contaminated property under the supervision of a certified person;

is not required to be certified but must have received the training for general site workers required by 29 CFR 1910.120(e), revised as of July 1, 2005. This training must include information on the hazards associated with illegal drug manufacturing operations in Indiana. (*Solid Waste Management Board; 329 IAC 17-4-1*)

329 IAC 17-4-2 Criteria for certification

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 2. (a) A certified person must meet all of the criteria in this section.

(b) Each certified person must have accumulated at least forty (40) hours of experience decontaminating contaminated properties under the supervision of a certified person or another person who has equivalent qualifications that are acceptable to the commissioner.

(c) Each certified person must have received the training for supervisors required by 29 CFR 1910.120(e), revised as of July 1, 2005. This training must include information on the hazards associated with illegal drug manufacturing operations in Indiana.

(d) Each certified person must have:

- (1) received training on decontamination and inspection of contaminated property provided by the department; and
- (2) passed an examination on the subject matter of the training provided by the department with a score of at least eighty percent (80%).

(e) Each certified person must receive the following refresher training:

- (1) Eight (8) hour annual refresher training that meets the requirements of 29 CFR 1910.120(e)(8), revised as of July 1, 2005.

(2) Biennial refresher training provided by the department.

(*Solid Waste Management Board; 329 IAC 17-4-2*)

329 IAC 17-4-3 Application for certification

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 3. (a) A person who wishes to be certified as a certified person must apply to the department in writing for certification. The application may be in any form but must include all of the following information:

- (1) Full name, address, telephone, and electronic mail contact information.
- (2) Copies of documents showing the applicant meets all applicable criteria in this rule.
- (3) Complete information showing how the person should be described on the list of certified persons.

(b) Mail or deliver the application to:

Indiana Department of Environmental Management
Office of Land Quality, Remediation Branch
Room 1101
100 North Senate Avenue
Indianapolis, Indiana 46204-2251.

(*Solid Waste Management Board; 329 IAC 17-4-3*)

329 IAC 17-4-4 List of certified persons

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 4. (a) The department will review the application for completeness. When the department determines that the person or persons identified in the application meet all criteria of this rule, the department will place that person or persons on the list of certified persons.

(b) The department will maintain a current list of all persons certified under this article. This list will be available:

- (1) to the public upon request; and
- (2) electronically on the department's Web site.

(c) An entity that employs persons certified under this article may be listed on the list of certified persons as long as each certified person remains qualified for certification. Such an entity is responsible for providing complete and accurate information showing how the entity should be described on the list of certified persons.

(d) The department may remove a person from the list of certified persons who:

- (1) falsifies or misrepresents any information in the application for certification;
- (2) fails to continue to meet the certification criteria in this rule;
- (3) fails to carry out the duties of a certified person

described in section 5 of this rule; or
(4) submits a written request for removal from the list to the address in section 3(b) of this rule.

(Solid Waste Management Board; 329 IAC 17-4-4)

329 IAC 17-4-5 Duties of a certified person

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 5. A certified person must do all of the following:

- (1) Conduct an assessment of the contaminated property to determine the types and levels of contamination present, including contamination in the septic system or sewage disposal system.
- (2) Notify the local health officer that decontamination will be conducted at that location.
- (3) Supervise decontamination of the property, including the septic system and sewage disposal system.
- (4) Notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance, including a warning about the hazards that may be expected when cleaning the septic system.
- (5) When decontamination is complete, inspect the contaminated property in accordance with section 6 of this rule.
- (4) Certify that:
 - (A) the property has been decontaminated; and
 - (B) the levels of chemicals used in the illegal manufacture of a controlled substance that were found at the property are below the decontamination levels listed in Table 1 or determined under section 6(b) of this rule.
- (6) Comply with 29 CFR 1910.120, revised as of July 1, 2005, during all decontamination operations.
- (7) Dispose or arrange for disposal of wastes resulting from decontamination in accordance with the following:
 - (A) 329 IAC 3.1 for wastes that are hazardous wastes as defined in 40 CFR 261, as incorporated by reference in 329 IAC 3.1-6-1.
 - (B) 327 IAC 7.1 for wastewater from a septic system.
 - (C) 329 IAC 10 for all other wastes resulting from decontamination.

(Solid Waste Management Board; 329 IAC 17-4-5)

329 IAC 17-4-6 Inspection of contaminated property

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 6. (a) Following decontamination, the certified person shall inspect the contaminated property for any remaining chemicals used in the illegal manufacture of a controlled substance as follows:

(1) Use the sampling procedures described in "Guidance and Standards for Cleanup of Illegal Drug-Manufacturing Sites," section 4 and appendices C through F, prepared for the Alaska Department of Environmental Conservation by Ecology and Environment, Inc., revised November 22, 2004, available from IDEM Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204-2241 or on-line at http://www.dec.state.ak.us/spar/perp/docs/druglab_guidance.pdf, as follows:

- (A) The term "property owner" means the certified person wherever it occurs.
- (B) The term "ADEC" means the department wherever it occurs.
- (C) References to "laboratory-specific methods" mean the analytical methods specified in Table 1.
- (D) References to "qualified environmental sampler" or "qualified sampler" mean the certified person.
- (E) Delete the first three (3) paragraphs of section 4.
- (F) Delete the first paragraph of subsection 4.1.
- (G) Delete subsection 4.3.2 PID/FID VOC Survey. A certified person may use this method for assessment, but one (1) of the methods listed in Table 1 must be used to certify decontamination.
- (H) All sampling must be coordinated with the laboratory used for analysis.
- (I) The wipe-sampling protocols in appendix C may be used for any controlled substance.

(2) Using the analytical methods listed in Table 1, determine if the levels of chemicals used in the illegal manufacture of a controlled substance are equal to or lower than the decontamination levels in Table 1.

Table 1.

Chemical	Decontamination level
Methamphetamine ¹	0.1 µg/100cm ²
Ephedrine ¹	0.1 µg/100cm ²
Pseudoephedrine ¹	0.1 µg/100cm ²
LSD (lysergic acid diethylamide) ¹	0.1 µg/100cm ²
Ecstasy (3,4-methylenedioxy-methamphetamine) (MDMA) ¹	0.1 µg/100cm ²
Volatile organic compounds ²	<1 ppm
Corrosives ³	pH 6-8
Mercury (air) ⁴	0.2 µg/m ³
Lead (surface) ⁵	< 40 µg/ft ²

¹Analyze for this contaminant using Method 8270C from "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, II, IIA, IIB, III, IIIA, and IIIB (SW-846), available from the Superintendent of Documents, U.S. Government

Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238 or an equivalent method acceptable to the department.

²Volatile organic compounds include but are not limited to acetone, benzene, ether, freon, hexane, isopropanol, methanol, toluene, and xylene. This standard is for air monitoring only and does not apply to septic tanks. Sample and analyze for these contaminants using Compendium Method TO-14A, "Determination of Volatile Organic Compounds (VOCs) In Ambient Air Using Specially Prepared Canisters With Subsequent Analysis by Gas Chromatography", or Compendium Method TO-15 "Determination of Volatile Organic Compounds (VOCs) In Ambient Air Using Specially Prepared Canisters and Analyzed by Gas Chromatography/Mass Spectroscopy (GC/MS)", from "Compendium of Methods for the Determination of Toxic Organic Compounds in Ambient Air, Second Edition" (EPA/625/R-96/010b), January 1997, available from the National Technical Information Service, Springfield, Virginia 22161, NTIS Order Number: PB99-172355. "Ppm" means parts per million.

³Corrosives include but are not limited to hydrochloric acid, sulfuric acid, sodium hydroxide, anhydrous ammonia, phosphoric acid, and muriatic acid. Analyze for corrosives using Method 9040C, 9041A, or 9045D from SW-846.

⁴The level for lead applies only if the amalgam or phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used. Analyze for lead using Method 6010 or 6020 from SW-846.

⁵The level for mercury applies only if the amalgam or phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used. This level is the final (1999) Minimal Risk Level for mercury determined by the Agency for Toxic Substances and Disease Registry. Analyze for mercury using a mercury vapor analyzer calibrated in accordance with the manufacturer's specifications. The mercury vapor analyzer must have a detection limit of 0.1 µg/m³ or lower.

(b) Analytical methods and decontamination levels for chemicals used in the illegal manufacture of a controlled substance that are not listed in Table 1 will be determined by consultation between the certified person, the department, and the state department of health using available scientific and health information relevant to that substance.

(c) Nothing in this section may be construed to prohibit independent third party validation of analytical data. (*Solid Waste Management Board; 329 IAC 17-4-6*)

329 IAC 17-4-7 Certificate of decontamination

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 7. (a) When the final decontamination levels listed in Table 1 or determined under section 6(b) of this rule have been met, the certified person shall certify in writing that decontamination has been completed and all applicable final decontamination levels have been met. The certification must be in the form shown in Figure 1.

(b) The certified person shall attach copies of the analytical reports from all post-decontamination testing to the certificate of decontamination.

(c) The certified person shall provide a copy of the certificate of decontamination and the analytical reports to the local health officer.

(d) A certified person shall make records and documents relevant to decontaminations performed by that certified person available to the department and the local health officer upon request for a period of five (5) years after the certificate of decontamination has been issued.

(e) The person who signs the certificate of decontamination shall maintain professional liability insurance in the amount of at least one million dollars (\$1,000,000).

CERTIFICATE OF DECONTAMINATION Under 329 IAC 17		
<p>I certify that I have decontaminated or supervised decontamination of the property described below, based on. Following decontamination, I inspected the property for all of the contaminants identified in my initial assessment of the property in accordance with 329 IAC 17-4-6. I certify that the property described below met all applicable decontamination levels listed in 329 IAC 17-4-6, Table 1, at the time of sampling, as evidenced by the attached analytical reports.</p>		
<p>Address: _____</p>		
<p>City: _____ County: _____</p>		
<p>Legal description of property: _____</p>		
Results of Post-Decontamination Testing		
<p>Date and time of post-decontamination sampling: _____</p>		
<p>The levels observed during post-contamination testing were:</p>		
Chemicals identified during the initial assessment	Decontamination levels in 329 IAC 17-4-6, Table 1	Highest observed levels for all samples
Methamphetamine	0.1 µg/100cm ²	
Ephedrine	0.1 µg/100cm ²	
Pseudoephedrine	0.1 µg/100cm ²	
LSD (lysergic acid diethylamide)	0.1 µg/100cm ²	
Ecstasy	0.1 µg/100cm ²	
Volatile organic compounds	<1 ppm	
Corrosives	pH 6-8	
Mercury	0.2 µg/m ³	
Lead	< 40 µg/ft ²	
<p>Name of certified person: _____</p>		
<p>Signature: _____ Date: _____</p>		

Figure 1.

(Solid Waste Management Board; 329 IAC 17-4-7)

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 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 proposed new rules at 329 IAC 17.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Steve Mojonier, 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, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin

Assistant Commissioner

Office of Land Quality

Other Notices

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IDEM extends the public comment period for the Draft 2006 303(d) List of Impaired Waters

IDEM is extending the public comment period for the Draft 2006 303(d) List of Impaired Waters. Pursuant to IC 13-18-2-3(a)(2), the draft 2006 303(d) list was published for comment in the Indiana Register on October 1, 2005. The draft list was made available in both hard copy (29 IR 236) and online:

<http://www.in.gov/legislative/register/October-1-2005.html>

The draft list is also available online at the following IDEM websites:

<http://www.in.gov/idem/rules/packets/water/2005/nov/index.html>

<http://www.in.gov/idem/water/planbr/wqs/303d.html>

The comment period was originally scheduled to end on December 29, 2005. In the interest of providing more time for Indiana citizens and other interested parties to review the list and provide comment, the public comment period has been extended to January 31, 2006.

Mailed comments should be addressed to:

Lawrence Wu, Rules Development Section Chief
Watershed Planning Branch
Office of Water Quality – MC 65-40
Indiana Department of Environmental Management
100 North Senate Avenue
IGCN Room N1255
Indianapolis, IN 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the IDEM Watershed Planning Branch offices located in the Indiana Government Center North at 100 North Senate Avenue, Room N1255, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments by facsimile may be sent to (317) 232-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm timely receipt of faxed comments by calling Lawrence Wu at (317) 234-1805, or toll free at (800) 451-6027.

PUBLIC COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered or faxed no later than January 31, 2006.

NATURAL RESOURCES COMMISSION**Information Bulletin #13****Second Amendment****January 1, 2006**

SUBJECT: Mediation and Facilitation in Administrative Proceedings before the Natural Resources Commission and the Department of Natural Resources

I. Introduction to Alternative Dispute Resolution

The use of “alternative dispute resolution” (or “ADR”) as a methodology to resolve disputes without resort to litigation has enjoyed increasing acceptance and application in recent years by the civil courts. There are several forms of ADR, with two of the most familiar being (binding) arbitration and (non-binding) mediation.

With the success of alternative dispute resolution at the civil level, there has been a growing interest in its application at the administrative level. Both federal and state agencies are looking to mechanisms to streamline government, and ADR provides an important opportunity for doing so.

One limitation to alternative dispute resolution at the state administrative level is that there are regulatory structures that cannot be negotiated, nor typically can the authority to enforce regulatory requirements be delegated by the state agency to a third person. This limitation is perhaps most notable for, but not exclusive to, instances where a state agency has primary enforcement authority (or “primacy”) for a federal program. The state agency must regularly demonstrate to its federal counterpart the ability to enforce a regulatory program in a manner that is at least as effective as at the federal level.

As a consequence, the form of alternative dispute resolution most-frequently implemented by state agencies is mediation. The mediator helps bring litigants or potential litigants together. Communications among the parties and the mediator are privileged as settlement negotiations. The mediator can urge a compromise, can help point out weaknesses in a party’s position or strengths in the opposing party’s position, and can assist in bringing a sense of realism to a dispute. The mediator has no authority, however, to require a negotiated settlement or to order or prohibit an enforcement action. The parties retain all of their legal rights and privileges throughout a mediation session.

II. Development of Mediation Before the Commission

Although several state agencies have used informal dispute resolution, sometimes calling the process “mediation”, the natural resources commission was a pioneer in the use of a mediation process similar to what is sanctioned for civil court proceedings. An early effort was developed and codified at 310 IAC 23-7 (repealed) to help resolve disputes between timber buyers and landowners. This mediation rule was authorized by statute and patterned closely after the rules for civil mediation. 310 IAC 23-7 was used successfully on several occasions for timber buyer cases pending before the NRC’s division of hearings and was, with the consent of the parties, also used in two administrative cases involving the Indiana Surface Mining and Reclamation Act.

The Indiana general assembly in 1995 created the administrative orders and procedures act (or “AOPA”) study committee. One of the charges of the AOPA study committee was to “study... [w]hether alternative dispute resolution would be effective to streamline and simplify administrative adjudication.” If the AOPA study committee determined ADR would be effective, a related charge was “how best to implement alternative dispute resolution” in the context of state administrative law.

With this backdrop, the governmental/regulatory agencies committee of the alternative dispute resolution section, Indiana state bar association, met in September 1995. The governmental/regulatory agencies committee agreed to discuss the use of mediation by the natural resources commission pursuant to the timber buyer law, the opportunity for mediation within the voluntary remediation program administered by the Indiana department of environmental management, and the possibility that the AOPA study committee would propose legislation with respect to one or more forms of alternative dispute resolution. A consensus was achieved with respect to three key points:

1. Mediation, with its dependence upon achieving an agreement by all parties in the final settlement, is the most conservative form of alternative dispute resolution and the form which should currently be pursued in state administrative law.
2. The mediator should enjoy technical expertise relative to the agency’s programs and their application to the Indiana administrative orders and procedures act.
3. A statutory structure should be developed which would be cognizant of the worth of mediation and the need to preserve the integrity of the negotiation process, including the protection of confidential statements by the parties.

The governmental/regulatory agencies committee also recommended a simple amendment proposed to IC 4-21.5 to acknowledge and authorize the use of mediation by state agencies. The recommendations of the governmental/regulatory agency committee were subsequently forwarded to the AOPA study committee.

Subsequently, the Indiana state bar association as a whole also adopted a general resolution for submission to the AOPA study committee. The resolution provided:

Resolved, that the Indiana State Bar Association urges Indiana administrative agencies to promote and utilize alternative dispute resolution. Further we encourage the Indiana General Assembly to take appropriate action to enable Indiana administrative agencies to effectively use alternative dispute resolution.

Resolved, that the Indiana State Bar Association commends the Administrative Orders and Procedures Act Commission for their efforts; and encourages the Commission to continue to study the administrative adjudication process in order to assure that the citizens of Indiana obtain a timely, fair and just hearing.

Be it resolved, and adopted by the Indiana State Bar Association Board of Governors this second day of December, 1995.

The AOPA study committee considered the use of alternative dispute resolution by state agencies in its 1995 summer session and proposed a legislative response. Although a much more ambitious undertaking than anticipated by the governmental/regulatory agencies committee bill draft, the AOPA study committee settled upon the use of mediation as the form of ADR to be implemented, and its legislative proposal was otherwise harmonious with that draft. The AOPA study committee proposal was ultimately embodied in Senate Bill 241, and the bill passed with only modest amendments from the version suggested by AOPA study committee.

Senate Bill 241 added a new chapter to the AOPA as P.L. 16-1996. The legislation became effective July 1, 1996 and required action by the "ultimate authority" for the agency to determine the appropriate application of mediation to the agency. The Natural Resources Commission is the "ultimate authority" for the department of natural resources pursuant to IC 14-10-2-3.

Effective August 1, 1996, the natural resources commission approved a nonrule policy document to implement P.L. 16-1996 and to set guidelines for its implementation. The nonrule policy document superseded 310 IAC 23-7, and IC 4-21.5-3.5 and the guidelines form the current foundation for mediation before this agency and the department of natural resources. The guidelines were described in 1996 as a "pilot project" likely to require refinement for mediation to achieve its full potential for dispute resolution and streamlining. Reference was also made to the potential for using facilitation. The commission also directed that the experience with mediation be presented for its subsequent review. See "Pilot Project for the Use of Mediation and Facilitation for Dispute Resolution Before the Natural Resources Commission and Before the Department of Natural Resources", Information Bulletin #13, 19 Ind. Reg. 3227 (August 1, 1996).

With the assistance of the Indiana Conflict Resolution Institute of Indiana University, five state agencies entered a memorandum of understanding in 1999 to cooperate in the implementation of mediation at the administrative level. These were the Indiana department of environmental management, the office of environmental adjudication, the state emergency management agency, the department of natural resources, and the natural resources commission. This memorandum was structured to terminate in 2000, although the participants subsequently continued to act under its guidance. This voluntary, cooperative effort has come to be known as the "Shared Neutrals Program".

A new document entitled the "2005 Memorandum of Understanding Concerning the Interagency Shared Neutrals Program for Mediation" has been prepared. The new memorandum also anticipates a voluntary, cooperative effort among state agencies but has an extended duration. The department of natural resources and the natural resources commission are authorized to join in the 2005 memorandum effective January 1, 2006.

III. Implementation of Administrative Mediation

1. Application: This document is intended to implement IC 4-21.5-3.5 for the use of mediation before the Natural Resources Commission and the Department of Natural Resources. The document should be construed liberally to achieve governmental streamlining and to help achieve consensus in the administrative functions of the agencies.

2. Application of Mediation and Facilitation to Proceedings of the Natural Resources Commission: Mediation is made available for the following matters under the jurisdiction of the commission:

- (1) proceedings in which the natural resources commission, or an administrative law judge for the commission, is the "ultimate authority" pursuant AOPA (including accelerated mediation for disputes relative to temporary structures in public freshwater lakes under 312 IAC 11-3-2);
- (2) where a hearing officer has been appointed for the commission regarding the creation, management, or dissolution of a conservancy district pursuant to IC 14-33;
- (3) a special commission hearing held pursuant to IC 14-11-1-3; and,
- (4) the mediation of disputes arising between the users of surface water pursuant to IC 14-25-1-8.

The parties may agree upon a mediator. To assist the parties in the selection of a mediator, the administrative law judge or hearing officer may identify a panel from the participants in the Shared Neutrals Program. If the parties do not agree upon a mediator, the administrative law judge or hearing officer may appoint a mediator from among the participants in the Shared Neutrals Program. The administrative law judge or hearing officer also has discretion to appoint a facilitator for any proceeding, except one governed by AOPA, where determined appropriate to assist in achieving a settlement or developing consensus on an issue that might make a settlement more likely. Unless the parties otherwise agree, a mediator shall serve without cost to them. A mediator selected under this paragraph shall be qualified under IC 4-21.5-3.5.

3. Application of Mediation and Facilitation to Proceedings of the Department of Natural Resources: Mediation is made available for the following matters under the jurisdiction of the department of natural resources:

1. a public hearing prior to a licensing action pursuant to IC 14-11-4-8 (including licenses under the flood control act, lakes preservation law, wild animal possession law, and other laws designated in that statute by the legislature);
2. where a conservancy district matter is pending before the department;

3. prior to a decision by the historic preservation review board on the addition or removal of a site from the register of Indiana historic sites and structures pursuant to IC 14-21-1-17; and,
4. for hearings held on petitions for rule change.

The parties may agree upon a mediator. To assist the parties in the selection of a mediator, the director or a deputy director may identify a panel from the participants in the Shared Neutrals Program. If the parties do not agree upon a mediator, the director or a deputy director may appoint a mediator from among the participants in the Shared Neutrals Program. The director or a deputy director also has discretion to appoint a facilitator to assist with the resolution of any dispute described in this paragraph. Unless otherwise the parties otherwise agree, a mediator shall serve without cost to them. A mediator selected under this paragraph shall be qualified under IC 4-21.5-3.5.

4. Voluntary Pool of Agency Mediators and Further Development of Mediation: Efforts should be explored by the commission's division of hearings and the department's office of legal counsel to determine the feasibility of establishing a voluntary pool of mediators outside state government. In these efforts, open communications should be maintained or developed with other state agencies, local or regional government, the Indiana state judiciary, and the Indiana state bar association.

5. Approval by the Natural Resources Commission and Publication: The first amended information bulletin was approved as by the natural resources commission as a nonrule policy document during its April 1999 meeting. The document was published in the Indiana Register at 22 IR 2949 (June 1, 1999). This amended information bulletin was approved by the commission during its November 2005 meeting and published in the Indiana Register on January 1, 2006.

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS: 03-0004; 99-0640**Gross Retail Tax****For the Years 1995 through 1997 and 1998 through 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. 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 of Revenue exercise its discretion to abate the ten-percent negligence on the ground that taxpayer had no direct obligation to remit use tax on the purchase of certain items.

II. Food Purchases – Gross Retail Tax.

Authority: IC 6-2.5-1-1 et seq.; IC 6-2.5-3-2; IC 6-2.5-5-20(a); IC 6-2.5-5-20(c)(8); Hyatt Corp. v. Dept. of State Revenue, 695 N.E.2d 1051 (Ind. Tax Ct. 1998); 45 IAC 2.2-5-38.

Taxpayer argues that the money it received for serving prepared meals was not subject to the gross retail tax.

STATEMENT OF FACTS

Taxpayer owns and operates a "guest pavilion," parking lots, dock, restaurants, and berthing slips. These facilities serve two riverboat casinos. The two adjacent riverboats are licensed to conduct separate, but coordinated gaming operations.

The riverboats' parent companies formed taxpayer as a joint venture in 1995. The two riverboat parent companies each have a 50 percent ownership interest in taxpayer. The intent of the two parent companies was to share the initial cost and ongoing expense of the land-based, support facilities – parking lots, food service, etc. – necessary for successful operation of the riverboats' gambling business.

During 1999, the Department of Revenue (Department) conducted an audit review of taxpayer's business records and tax returns. The Department reviewed records and returns for 1995, 1996, and 1997. This first audit resulted in the issuance of proposed assessments of additional gross retail tax. Taxpayer disagreed and submitted a protest to that effect. Thereafter, taxpayer and the Department reviewed invoices and related documentation to resolve the issues raised in this first protest. According to taxpayer, taxpayer and the Department reached an "initial agreement" dated August 8, 2002, which made specific adjustments to the 1995, 1996, 1997 assessments. According to taxpayer, it paid the unresolved gross retail tax assessments in full. Taxpayer believes that the only unresolved issue stemming from this first set of assessments is the ten-percent negligence penalty.

During 2002, the Department conducted a second audit review of taxpayer's business records and tax returns for 1998, 1999, 2000, and 2001. The Department concluded that taxpayer owed additional use tax on the complimentary meals taxpayer served to

the riverboats' employees and the riverboats' preferred customers. Accordingly, the Department issued notices of "Proposed Assessment." Taxpayer disagreed with the proposed assessment and submitted a second protest to that effect.

The Department and taxpayer decided that the two protests – although addressing separate issues stemming from separate audits – should be treated and resolved as one protest. An administrative hearing was conducted during which taxpayer's representative explained taxpayer's position on the two remaining, disputed issues. This Letter of Findings results.

DISCUSSION

I. Abatement of the Ten-Percent Negligence Penalty.

The ten-percent negligence penalty stems from the first audit and the consequent assessment of additional use tax. The first audit found that taxpayer should have paid use tax on the materials integrated into realty under a lump sum contract and a time and materials contract. In addition, the first audit found that taxpayer should have paid use tax on the purchase of certain communications equipment, office equipment, kitchen equipment, and other personal property.

After taxpayer submitted the first protest, the Department and taxpayer's representatives conducted a review of the initial 1995, 1996, and 1997 assessments. The two parties agreed that certain purchases were not subject to use tax because sales tax was paid on the original invoice. The parties agreed that purchases of certain kitchen equipment were exempt from sales tax. The parties agreed that taxpayer had paid sales tax on a portion of the cost of a non-exempt item. The parties agreed that certain other charges should be eliminated (without written explanation) from the use tax assessment. The parties apparently compromised on the use tax assessments attributable to the lump sum contracts for the improvement to realty. As stated in the August 8, 2002, agreement, "for the remaining purchases claimed in the protest related to lump sum contracts, it was agreed that taxing 60% of these purchases fairly reflects the true taxability."

The unresolved issue is whether the ten-percent negligence penalty related to the first set of use tax assessments should be abated in its entirety.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

In the August 8 agreement, the parties agreed to compromise or otherwise resolve the contested use tax issues. As stated in that agreement, "The complexity of the paperwork, the inability to obtain every source document, and the inferences and conclusions that could be drawn from the information that was provided[,] all lead to the conclusion, that in fairness to the state as well as the taxpayer, this compromise was warranted."

Given the parties' willingness to compromise on the original use tax assessment, that both parties agreed that a substantial portion of the original assessment should be abated, and that the use tax questions were difficult to resolve because of the "complexity of the paperwork," it cannot be said that the original use tax assessments were attributable to the absence of reasonable care on the part of taxpayer or that taxpayer failed – under the circumstances – to exercise ordinary business care and prudence.

Therefore, the ten-percent negligence penalty imposed following audit review of taxpayer's 1995, 1996, and 1997 records should be entirely abated.

FINDING

Taxpayer's protest is sustained.

II. Food Purchases – Gross Retail Tax.

Taxpayer is owned by two riverboat casinos. Taxpayer supplies the ancillary, land-based services necessary for the operation of the riverboats. Each riverboat owns 50 percent of taxpayer.

Taxpayer operates a cafeteria which serves free meals to the riverboats' employees. In addition, taxpayer serves free meals to the riverboats' preferred customers. The preferred customers are those who have received a complimentary meal voucher.

Taxpayer keeps records of the meals it serves to its own employees, the meals it serves to the riverboats' employees, and the meals it serves to the riverboats' preferred customers.

Every month, taxpayer sends a bill to each of the two riverboats for the cost of the meals served to the riverboats' employees and the riverboats' customers. The two riverboats reimburse taxpayer for the cost of the meals served to these employees and customers.

The second audit review (1998 through 2001) found that taxpayer should have collected sales tax on the reimbursements received from the riverboats. As stated in the explanation of adjustments, "An adjustment was made in the audit to assess the taxpayer for sales tax that should have been charged to [the two riverboats] on the cost of these meals." However, the audit did not assess use tax on the food used to provide free meals to taxpayer's *own* employees because, as stated in the explanation of adjustments, "the

food is never sold. The food was purchased free of sales tax in accordance with 45 IAC 2.2-5-39 as the purchase of food for human consumption.”

Taxpayer argues that the meals served to the riverboats’ employees and the riverboats’ customers were exempt from sales tax under IC 6-2.5-5-20(a) which states that, “Sales of food for human consumption are exempt from the state retail tax.” According to taxpayer, it “purchased only unprepared food which it prepared and provided to employees and patrons of [the two riverboats]. All of these purchases were exempt from Indiana sales and use tax under the food for human consumption exemption.”

Taxpayer points to the decision set out in Hyatt Corp. v. Dept. of State Revenue, 695 N.E.2d 1051 (Ind. Tax Ct. 1998) as support for its position that the cost of the meals served to the riverboats’ employees and customers was not subject to sales or use tax. In Hyatt, the petitioner-taxpayer argued that it was not subject to use tax on the food it purchased and served as complimentary meals to its own guests and employees. Id. at 1052. Petitioner-taxpayer claimed that, under IC 6-2.5-5-20(a), its food purchases were exempt because the items purchased were “food for human consumption” and that the food items were not “food furnished, prepared, or served for consumption at a location, or on equipment provided by the retail merchant.” Id. at 1054. *See* IC 6-2.5-5-20(c)(8). The court agreed with petitioner-taxpayer’s position. Petitioner-taxpayer was buying food for human consumption and giving away meals prepared with that food. Id. at 1056-57. The Tax Court found that, “the fact that the food [petitioner-taxpayer] purchased was not resold is irrelevant to the question of whether [petitioner-taxpayer’s] food purchases qualify for an exemption under section 6-2.5-5-20.” Id. at 1057.

Indiana imposes a sales tax on retail transactions and a complimentary use tax on tangible personal property that is stored, used, or consumed in the state. IC 6-2.5-1-1 et seq. 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, regardless of the location of that transaction or of the retail merchant making that transaction.” IC 6-2.5-3-2.

As noted above, “Sales of food for human consumption are exempt from the state gross retail tax.” IC 6-2.5-5-20(a). However, the phrase “food for human consumption” does not include “food furnished, prepared, or served for consumption at a location or on equipment provided by the retail merchant.” IC 6-2.5-5-20(c)(8). The Department’s regulation restates the rule: “The gross retail tax exempts food for human consumption. Primarily the exemption is limited to sales by grocery stores, supermarkets, and similar type businesses of items which are commonly known as grocery food.” 45 IAC 2.2-5-38.

Taxpayer is reimbursed for the cost of the meals served to the riverboats’ employees and the riverboats’ customers. The Department agreed that taxpayer was not subject to use on the value of the food to taxpayer’s *own* employees. What is at issue is whether taxpayer should have charged the two riverboats sales tax for the cost of the meals served to the *riverboats’* employees and the *riverboats’* customers. Taxpayer argues that it was simply acting as an agent for the two riverboats. According to taxpayer, it “had no prospects for earning a profit. Its sole purpose was to act as [the riverboats’] agent for the purpose of providing food to their employees and club members.” Taxpayer concludes that, “All acts performed by [taxpayer] in its agency capacity, including the purchase, preparation and delivery of food to [the riverboats’] employees and patrons, are therefore treated as though such acts were performed by [the riverboats].”

Taxpayer indicates that it has acted as the riverboats’ agent since its inception and that the arrangement was formally memorialized six years afterward. Taxpayer maintains that – because of the agency/principal relationship it has with the riverboats – it stands in the same shoes as the petitioner-taxpayer in Hyatt; because the riverboats could presumably have purchased food and served that food free-of-charge to the riverboats’ own employees and the riverboats’ own preferred customers, taxpayer stands in the stead of the two riverboats and can purchase and serve meals to the riverboats’ employees and guests without collecting sales tax.

However, it should be noted that taxpayer wants something more than the petitioner-taxpayer in Hyatt. In that case, the petitioner-taxpayer wanted to buy unprepared food without paying sales tax. Hyatt, 695 N.E.2d at 1054-55. Taxpayer wants to receive tax-free payment from the riverboats for the cost of the cooked and prepared meals along with the cost of procuring, preparing, and delivering the food to riverboat employees and guests. As set out in the parties’ Limited Agency Agreement, “In consideration of the [taxpayer’s] performance of its duties under this Agreement, [the riverboats] shall reimburse [taxpayer] monthly for the actual cost of food purchased and other costs and expenses incurred in connection with the provision of food to [the riverboats’] employees and club members.” Essentially, taxpayer wants to operate a restaurant/catering business without having to charge sales tax when it receives payment for serving meals.

The Department must respectfully disagree with taxpayer’s argument because it does not conclude that the rules governing the interplay between the gross income tax and agency/principal standards are relevant in determining whether a retail transaction occurs when the riverboats pay taxpayer for the cost of meals served to other than the taxpayer’s own employees. As recognized in the parties’ own “Limited Agency Agreement,” “[A]s part of [taxpayer’s] *Business*, [taxpayer] maintains and operates in the pavilion a cafeteria for the purpose of producing, preparing and delivering food to [taxpayer’s] employees and to the [the riverboats’] employees.” (*Emphasis added*). Elsewhere in the same document, the parties recognize “also as a part of [taxpayer’s] *Business*, [taxpayer] maintains and operates certain other facilities for the purpose of procuring, preparing and delivering food to the [the riverboats’] club members.... [Taxpayer] operates the Club Member Food Facilities and provides such food free-of-charge to club members who bear compensation certificates....” (*Emphasis added*).

The agency/principal arrangement is an irrelevancy in determining whether taxpayer should have collected sales tax on the money it received for serving meals to other than its own employees. Taxpayer is in the “business” of running a restaurant/cafeteria service. It buys and prepares food which it serves to persons other than its own employees. Taxpayer receives payments based upon the number of meals served to persons other than its own employees. These transactions are subject to the gross retail tax, and taxpayer should have collected sales tax each time it received a payment.

FINDING

Taxpayer’s protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220020461.LOF

LETTER OF FINDINGS: 02-0461

Indiana Corporate Income Tax

For the Tax Years 1997, 1998, and 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUES

I. Elimination of Interest Income Attributable to Holding Company’s Intercompany Bonds – Gross Income Tax.

Authority: 45 IAC 1.1-4-5; 45 IAC 1.1-4-5(a); 45 IAC 1.1-4-5(b); 45 IAC 1-1-166.

Taxpayer – representing members of its affiliated companies – maintains it was entitled to a deduction from its gross income. Taxpayer claims the deduction because interest was transferred from affiliated company to another. The audit disallowed the deduction, and taxpayer protests. Taxpayer argues that money received in the form of fictional intercompany interest payments during 1997, 1998, and 1999 should not have been disallowed as intercompany receipts; taxpayer admits that Holding Company was not qualified to do business in Indiana during 1997 and 1998 but that in 1998, Holding Company merged into taxpayer with taxpayer remaining as the sole surviving entity.

II. Elimination of Intercompany Receipts – Gross Income Tax.

Authority: IC 6-8.1-5-1(b); IC 6-2.1-3-3; 45 IAC 1.1-1-5; 45 IAC 1.1-4-5(a); 45 IAC 1-1-166; 45 IAC 1-1-51; 45 IAC 1-1-10.

Taxpayer argues that the audit erred in disallowing as intercompany receipts money received from numerous trusts. The audit did so because the trusts were not included in the consolidated gross income tax filings. Taxpayer maintains that the income from the trusts was fictional and was merely a tax reporting convenience.

III. Exclusion of Out-of-State Income – Gross Income Tax.

Authority: IC 6-8.1-5-1(b); IC 6-2.1-3-3.

Taxpayer argues that the audit erred in disallowing the deduction of fee income reported as Indiana receipts. Taxpayer maintains that the fee income was earned at the initiation of an investment in a New York building and that the work related to the investment was completed in New York. Because the “preponderance of the work was completed outside of Indiana,” taxpayer believes that the fee income should be deducted from the Indiana gross income tax base.

IV. Excluding Out-of-State Sales – Gross Income Tax.

Authority: IC 6-8.1-5-1(b); IC 6-2.1-2-2; IC 6-2.1-1-13; IC 6-2.1-1-2; 45 IAC 1.1-6-2; 45 IAC 1.1-2-5(a); 45 IAC 1-1-96; 45 IAC 1-1-54; 45 IAC 1-1-51.

Taxpayer challenges the audit’s decision disallowing the exclusion of certain sales receipts attributable to non-Indiana jurisdictions. Taxpayer maintains that the sales receipts should be excluded because taxpayer has established nexus in the other jurisdictions.

V. Intercompany Aircraft Rent Payments – Apportionment / Property Factor.

Authority: IC 6-3-2-2(b); IC 6-3-2-2(c); 45 IAC 3.1-1-41.

In calculating its property factor, taxpayer included – as rented property – the value of certain airplane rental payments. The rent was paid by one member of the consolidated return to another member of the consolidated return. The audit removed the rental value from the property factor on the ground that the rent consisted of “intercompany receipts.” Taxpayer disagrees.

VI. Addback of Riverboat Wagering Tax – Adjusted Gross Income.

Authority: IC 6-3-2-1(b); IC 6-3-1-3.5(b)(3); Aztar Ind. Gaming v. Dept. of State Revenue, 806 N.E.2d 381 (Ind. Tax Ct. 2004); 45 IAC 3.1-1-8(3)(a).

Taxpayer disagrees with the audit’s adjustment adding back a federal deduction for Riverboat Wagering Tax.

VII. Exclusion of Dividend and Interest Income – Gross Income Tax.

Authority: IC 6-2.1-1-2(c)(6); IC 6-2.1-1-2(d).

Taxpayer owns life insurance companies located outside the state. One of the life insurance companies – located in Minnesota – paid interest and dividends to parent company. Taxpayer claims that the interest and dividends should have been excluded from the consolidated group’s gross income tax calculation because the interest and dividends were earned outside of Indiana and because the Minnesota subsidiary does not have a business situs within Indiana.

VIII. Elimination of Intercompany Transactions Between Members of a Consolidated Gross Income Tax Return – Gross Premiums Privilege Tax / Gross Income Tax.

Authority: IC 27-1-18-2(a); IC 27-1-18-2(b); IC 6-3-2-2.8; 45 IAC 1.1-4-5(a); 45 IAC 1-1-166.

Taxpayer argues that, for purposes of the Gross Premiums Privilege Tax, it is entitled to exclude intercompany receipts when calculating its gross income tax.

STATEMENT OF FACTS

Taxpayer is an in-state insurance company which provides insurance, investment, and lending products. Taxpayer is also the parent company of numerous subsidiaries which together file a consolidated tax return. These subsidiaries provide support service to the parent and also to certain related insurance companies. The related insurance companies are purportedly domiciled outside of Indiana.

The Department of Revenue (Department) conducted an audit review of taxpayer’s tax returns and business records. The audit resulted in the assessment of additional corporate income tax. Taxpayer protested the audit’s determination and also submitted additional claims for refund. An administrative hearing was conducted during which taxpayer’s representative explained the basis for its protest of the audit review’s findings. In addition, taxpayer’s representative attempted to justify the grounds for granting the additional refunds unrelated to the audit. This Letter of Findings, addressing both the audit and refund issues, results.

DISCUSSION

I. Elimination of Interest Income Attributable to Holding Company’s Intercompany Bonds – Gross Income Tax.

For 1997, 1998, and 1999, taxpayer excluded certain amounts of money from its gross income tax calculation. Taxpayer did so on the ground that the money represented “intercompany transactions” among members of the consolidated group. The audit disallowed the deduction of money received from one of the affiliated companies – hereinafter “Holding Company” – on the ground that Holding Company was not authorized to do business in Indiana.

Taxpayer disagrees stating that the audit erred in its decision; taxpayer claims that the deduction should be reinstated for the tax year 1999.

45 IAC 1-1-166 states in part as follows:

The total gross receipts of all affiliated group members are reported on the [consolidated] return, then receipts from intercompany sales of property and payments of dividends, rents, interest and service charges may be eliminated from taxable gross receipts. However, receipts from distributions in connection with the dissolution of any group member and income earned by any group member outside the state may not be eliminated on the return as intercompany receipts.

Effective January 1, 1999, the Department’s Gross Income Tax regulations were revised. The revised regulation, designated as 45 IAC 1.1-4-5(a), states that:

Except as provided in subsections (b) and (c), an affiliated group of corporations, as defined in IC 6-2.1-5-5, is entitled to a deduction from the gross income reported on the consolidated return. The amount of the deduction is the total gross income received from transactions between the members of the group. (b) The deduction provided by subsection (a) does not apply to gross income received because of the dissolution of a member of the affiliated group. Also the deduction does not apply to gross income derived *from sources outside Indiana*. Nor does the deduction apply to gross income derived from an affiliate not qualifying to be included in the consolidated filing. (*Emphasis added*).

Under 45 IAC 1-1-166, the audit was correct in eliminating the 1997 and 1998 deductions between taxpayer and Holding Company because Holding Company was not located in nor qualified to do business in Indiana. “[I]ncome earned by any group member outside the state may not be eliminated on the return as intercompany receipts.” 45 IAC 1-1-166.

Nevertheless, taxpayer maintains that the 1999 deduction should not have been eliminated because taxpayer and Holding Company merged during 1999; taxpayer was the only surviving member. Under 45 IAC 1.1-4-5, the audit was correct in eliminating the 1999 deduction because, insofar as the contemporaneous identity of taxpayer and Holding Company, there were no “members of the group.” 45 IAC 1.1-4-5(a). The Holding Company ceased to exist, and any income attributable to the now vanished Holding Company was simply taxpayer’s income; by definition, there were no intercompany receipts to eliminate or deduct.

In addition, because the money attributable to the vanished Holding Company came from sources outside Indiana, it was money earned outside the state, and the intercompany deduction does not “not apply to gross income derived from sources outside Indiana.” 45 IAC 1.1-4-5(b). This income is not subject to Indiana’s gross income tax.

FINDING

Taxpayer’s protest is respectfully denied.

II. Elimination of Intercompany Receipts – Gross Income Tax.

The audit eliminated intercompany deductions between one of taxpayer's subsidiaries ("Subsidiary") and numerous trusts. The deductions represented fictional interest payments which were never paid. The audit did so because the trusts were not included in the consolidated gross income tax filing.

Taxpayer disagrees and states that the deductions should be allowed. Taxpayer explains as follows; taxpayer initiated financing transactions which required the establishment of various trusts. Taxpayer did so by "issuing debt" to a Delaware trust "which in turn issued preferred stock to the trust's investors." The trust interests were held by unrelated entities with the exception of a small amount of "beneficial interest held by [Subsidiary]." Taxpayer explains that the interest which was due Subsidiary had not been paid and that taxpayer has no intention of ever paying the interest.

Although the interest would never be paid, on its consolidated federal income tax return, taxpayer took a deduction for the full amount of the interest related to the debt issued to the trust. Taxpayer describes this as "fictitious income." After creating this "fictitious income," the "fictitious income" amounts were eliminated in the Indiana Gross Income Tax calculation. The audit disallowed this elimination.

45 IAC 1-1-166 states in part as follows: "The total gross receipts of all affiliated group members are reported on the [consolidated] return, then receipts from intercompany sales of property and payments of dividends, rents, interest and service charges may be eliminated from taxable gross receipts."

45 IAC 1.1-4-5(a) provides that, "an affiliated group of corporations, as defined in IC 6-2.1-5-5, is entitled to a deduction from the gross income reported on the consolidated return. The amount of the deduction is the total gross income received from transactions between the members of the group."

Under either 45 IAC 1-1-166 or 45 IAC 1.1-4-5(a), the audit was correct in eliminating these "intercompany deductions" because the trust companies were never members of the "affiliated groups of companies."

Nonetheless, taxpayer states that the amounts should be eliminated because – although reported on the federal income tax return – the interest would never actually be paid but was merely a "tax reporting convenience." The Department must disagree because the amounts – such as they are – constitute "constructive receipts" as defined in 45 IAC 1-1-10. That regulations states that, "'Constructive receipts' are those items of gross income which are not actually received by the taxpayer but which are credited to him, available for his withdrawal, paid to another for his benefit, or represent income to which he is entitled." *See also* 45 IAC 1.1-1-5.

Taxpayer has anticipated the "constructive receipts" argument. Taxpayer states that, "even if the first argument is found to be in error and constructive receipts are found to exist, clearly no Indiana nexus can be attached." Taxpayer states that the fictitious interest amounts were attributable to Subsidiary, a Delaware company, which does not have an Indiana nexus. Taxpayer's argument is as follows: "In the facts [taxpayer] remits [fictitious] interest payments to a Delaware trust pursuant to the debt instrument held by the trust. The trust remits the [fictitious] dividend income to its passive investment holders. In this instance, the entity is [Subsidiary] a Delaware holding company. No Indiana nexus is established; therefore, no income should be included in the tax base." However, as elsewhere stated by taxpayer, "This interest was for business and legal purposes and had no tax motivation in itself. The interest due [Subsidiary] has not been paid to date and [] will never be paid."

Taxpayer's "nexus" argument is apparently based on the proposition that the constructive interest income was attributable to doing business with an out-of-state entity. IC 6-2.1-3-3 provides that "[g]ross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign county is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution."

Taxpayer's "nexus" argument is unfounded because the interest amounts were not the result of taxpayer doing business with an out-of-state entity. The amounts were spun out of whole cloth as the result of a complicated trust/debt/interest scheme between itself and its own Delaware Subsidiary which was also a member of the consolidated group. As a result of that transaction, taxpayer obtained "constructive receipts" which were duly reported on its federal income tax returns. This transaction may have had unanticipated gross income tax implications, but there is nothing related to the transaction which raises questions of a constitutional dimension. In addition, taxpayer assumes that Subsidiary has established an out-of-state nexus and that the income was "directly related to an integral part of a business conducted at a 'business situs' outside Indiana." 45 IAC 1-1-51. Without additional information, the Department is unable to accept taxpayer's conclusion that the constructive receipts were attributable to a source outside Indiana. Taxpayer has not met its burden of demonstrating that the proposed assessment is incorrect. IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is respectfully denied.

III. Exclusion of Out-of-State Income – Gross Income Tax.

On its 1999 gross income tax return, taxpayer excluded certain "fee income." The "fee income" was attributable to a "Consultancy Agreement" between taxpayer and an unrelated entity. In the Consultancy Agreement, taxpayer agreed to provide business and financial consulting services related to taxpayer and its affiliates' investment in a building located in New York. Taxpayer claims that "[a] significant amount or (sic) work surrounding this engagement was incurred at the initiation of the investment and was completed in New York." Taxpayer concludes that because the parties' "contract provides for compensation

relating to New York property, and the preponderance of the work was completed outside of Indiana, [taxpayer] believes that it is appropriate to exclude such from the Indiana gross receipts base.”

Taxpayer is correct in pointing out that money earned from doing business outside Indiana is not subject to the Gross Income Tax. IC 6-2.1-3-3 provides that “[g]ross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign county is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution.”

However, in order to establish that it is entitled to deduct the amount earned from the out-of-state contract, taxpayer must meet its burden of proving that the assessment is incorrect. “The notice of proposed assessment is *prima facie* evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1(b). Taxpayer’s evidence consists of the twin assertions that the “preponderance of the work was completed outside of Indiana” and that a “significant” amount of the contract work was performed in New York. These statements alone are insufficient, and taxpayer has not met its burden of proving that the audit’s determination was incorrect.

FINDING

Taxpayer’s protest is respectfully denied.

IV. Excluding Out-of-State Sales – Gross Income Tax.

A. Five Insurance Broker/Dealers.

Taxpayer has five subsidiaries which sell variable and mutual fund products. The five subsidiaries sell their investment products to customers within Indiana and to customers outside Indiana through a network of independent agents. The five subsidiaries earned commission income on each of the sales.

The audit reported that “[t]he commission income was sourced to the location where the sale and/or policyholder resided and [was] therefore deducted as out of state sales by the taxpayer.” The audit disallowed the deduction of these sales as out-of-state income because the five subsidiaries “have no property or payroll located outside of Indiana,” and because the “income was not directly related to a business situs outside of Indiana.”

The audit did so under authority of 45 IAC 1-1-51 which states that, “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)... except that income which may be directly related to an integral part of a business regularly conducted at a ‘business situs’ outside Indiana.” *See also* 45 IAC 1.1-6-2.

Taxpayer disagrees with the audit’s decision and argues that the five subsidiaries established a nexus with the out-of-state locations in which the original sales were completed. Taxpayer points out the foreign states provided services to the five subsidiaries, that it was taxpayer’s intent to establish its investment products in those foreign states, that it maintained an inventory of brochures and selling materials in the foreign states, that it had filed state income tax returns in the foreign states, and that none of the foreign states had “rejected such nexus.” Taxpayer maintains that the income should be apportioned to those foreign states.

Gross income tax is imposed upon the receipt of the entire taxable gross income of a resident or domiciliary of Indiana. IC 6-2.1-2-2. The term “taxable gross income” means all gross income which is not exempt from tax under IC 6-2.1-3 et seq. less all deductions which are permitted under IC 6-2.1-4 et seq. IC 6-2.1-1-13. In particular, IC 6-2.1-1-2 provides that “‘gross income’ means all the gross receipts a taxpayer receives (1) from trades, business, or commerce.... [and] (3) from the sale, transfer, or exchange of property, real or personal, tangible or intangible...” In regards to the taxpayer’s own commission income, 45 IAC 1-1-96 provides that “[g]ross receipts from services means receipts derived from activities performed in the process of completing a service agreement or contract... Such income includes, but is not limited to commissions, fees, receipts from service contracts, or income from similar sources.” *See also* 45 IAC 1.1-2-5(a).

Under the regulations governing the gross income tax, “taxable gross income” includes income that is derived from “intangibles.” 45 IAC 1-1-51. The term “intangibles” includes:

notes, stocks in either foreign or domestic corporations, bonds, debentures, certificates of deposit, accounts receivable, brokerage and trading accounts, bills of sale, conditional sales contracts, chattel mortgages, “trading stamps,” final judgments, leases, royalties, certificates of sale, choses in action *and any and all other evidences of similar rights capable of being transferred, acquired or sold.* (*Emphasis added*). *Id.* *See also* 45 IAC 1.1-6-2.

In order for Indiana to impose the gross income tax on income derived from taxpayer’s intangibles, the Department must determine that the income is derived from a “business situs” within the state. *Id.* The regulation states that taxpayer has established a “business situs” within the state “[i]f the intangible or the income derived therefrom forms an integral part of a business regularly conducted at a situs in Indiana...” *Id.* Once the taxpayer has established a “business situs” within the state, “and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes.” *Id.*

For purposes of the state’s gross income tax, the Department concludes that commission income derived from the taxpayer’s sales of investment vehicles, is income derived from a “business situs” within Indiana and is properly subject to the state’s gross income tax scheme. Taxpayer provided its investment services in Indiana, the five subsidiaries do not have property or payroll in

the foreign states, and neither taxpayer nor its subsidiaries have established a business situs in any of the foreign states.

Accordingly, because taxpayer's business situs is within the state and because the income at issue is "connected with that business, either actually or constructively," the income is subject to the state's gross income tax.

B. Delaware Holding Company.

Taxpayer maintains that one of its subsidiaries is a Delaware holding company and is "different from those previously discussed." Taxpayer states this Delaware holding company "received dividends from its subsidiaries." Taxpayer concludes that the Delaware holding company's "activities in the sale[] and distribution of certain financial intangibles were sufficient to establish nexus in those jurisdictions where the products were sold and to require the apportionment of business to those foreign states."

The audit's description of Delaware holding company's business differs somewhat from that of taxpayer. The audit states that – along with the five subsidiaries described previously – the Delaware holding company earned commission income from the sale of investment vehicles. The audit found that the Delaware holding company did not have payroll or property outside Indiana and that its income "was not directly related to a business situs outside of Indiana...."

Taxpayer has failed to demonstrate that the Delaware holding company's business substantively differs from that of the other five subsidiaries. The burden of demonstrating the proposed assessment is wrong rests with taxpayer. IC 6-8.1-5-1(b). Taxpayer has failed to meet that burden.

FINDING

Taxpayer's protest is respectfully denied.

V. Intercompany Aircraft Rent Payments – Apportionment / Property Factor.

During the audit period, taxpayer included as rented property the value of the aircraft taxpayer leased from one of its subsidiaries. The audit found that because both taxpayer and its subsidiary were in the consolidated return and because all intercompany receipts had been eliminated, the rental amounts should be eliminated when calculating the property factor.

The audit disagreed with taxpayer's calculation of its "property factor." According to the audit, "the taxpayer included in [r]ented property, intercompany aircraft rental from [taxpayer] to [subsidiary]. The audit concluded that because, "these companies are in the consolidated return and all intercompany receipts have been eliminated, these rents should be eliminated in calculating the property factor."

Taxpayer challenges the audit's decision stating that "[c]onfidence can be gained that the [rental] expense is not being double counted in the apportionment factor."

Taxpayer's protest somewhat misses the mark. The issue is not whether the value of the rental payments is being double counted but whether the audit was correct in excluding the value of the rental payments from the property factor.

IC 6-3-2-2(b) provides for a standardized formula for determining the tax liability of a corporation which receives income from sources both within and outside the state. That section states that: "[I]f business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three...." IC 6-3-2-2(c) states that, "The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year."

Taxpayer maintains that the value of the rental payments should be included in the property value calculation. For illustrative purposes, one of the taxpayer's subsidiaries owns a \$1,000,000 airplane; the subsidiary's airplane is "rented" to taxpayer. Again for purposes of illustration, taxpayer pays subsidiary \$1,000 to rent the airplane during one of the tax years here at issue. In calculating the property factor, taxpayer used the \$1,000 to calculate its property factor because – according to taxpayer – the \$1,000 represented "real and tangible personal property owed or rented and used in this state during the taxable year...." IC 6-3-2-2(c).

Setting aside the audit's characterization of the rental as "intercompany receipts," the audit was correct in eliminating the value of the rent payments (the \$1,000 cited in the example above) from the property factor because the \$1,000 is not "income producing property." The \$1,000,000 airplane produces business income; the \$1,000 rent payment does not. 45 IAC 3.1-1-41 states that, "The property factor includes all property owned or rented by the taxpayer which is actually used or is available for or capable of being used to produce business income."

In addition, the audit was correct in eliminating the rental receipts because the value of the income producing property has – presumably – already been included in the group's consolidated return. There is no obvious justification for including the value of the (\$1,000,000) airplane in the property factor and also including the value of the rental received from that same airplane.

FINDING

Taxpayer's protest is respectfully denied.

VI. Addback of Riverboat Wagering Tax – Adjusted Gross Income.

The audit made an adjustment to taxpayer's distributive share of partnership income received from a gambling company. The

adjustment added back a deduction made to taxpayer's federal return by adding back a federal deduction for Riverboat Wagering Tax.

Taxpayer states that it "disagrees with the finding that the wagering tax is a tax which is disallowed for computing [Indiana] Adjusted Gross Income."

Indiana adjusted gross income tax is imposed upon the adjusted gross income of a corporation that is derived from Indiana sources. IC 6-3-2-1(b). Indiana adjusted gross income is the same as "taxable income" as defined by I.R.C. § 63 and adjusted according to IC 6-3-1-3.5(b). One of those adjustments requires the taxpayer to "[a]dd an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States." IC 6-3-1-3.5(b)(3). *See also* 45 IAC 3.1-1-8(3)(a).

The Indiana Tax Court has addressed taxpayer's specific argument and has determined that the Riverboat Wagering Tax "is an excise tax that is measured by income." *Aztar Ind. Gaming v. Dept. of State Revenue*, 806 N.E.2d 381, 386 (Ind. Tax Ct. 2004). The audit was correct in making the addback adjustment because the Riverboat Wagering Tax is "subject to the add-back provision of Indiana Code § 6-3-13.5(b)(3)." *Id.*

FINDING

Taxpayer's protest is respectfully denied.

VII. Exclusion of Dividend and Interest Income – Gross Income Tax.

In addition to challenging determinations found within the audit, taxpayer seeks a further adjustment for calendar years 1998 and 1999. Taxpayer maintains that dividends, interest, and administrative fees received from a Minnesota company should have been eliminated from taxpayer's consolidated gross income subject to Indiana gross income tax.

Taxpayer bought Minnesota Company at the end of 1998. At the end of 1999, Minnesota Company paid taxpayer a \$200,000,000 dividend. This amount was originally included in taxpayer's 1999 gross income. Including this amount increased taxpayer's gross income tax by \$2,400,000. In addition, Minnesota Company made interest payments to taxpayer. Interest payments of approximately \$1,000,000 were paid during 1998 and 1999. Taxpayer claims that these two amounts should have been eliminated from taxpayer's 1998 and 1999 gross income tax returns. Accordingly, taxpayer seeks a return of the gross income tax paid on the \$201,000,000.

Taxpayer states that the "GIT does not include receipts of Indiana corporations from trade or business conducted at a legal situs outside Indiana or from activities incident to that trade or business." Taxpayer concludes that the receipts consisted of dividends and interest received from a company doing business outside Indiana.

As support of its contention, taxpayer points to IC 6-2.1-1-2(c)(6) which states that, "The term 'gross income' does not include... gross receipts received by corporations incorporated under the laws of Indiana from a trade or business situated and regularly carried on at a legal situs outside Indiana or from activities incident to such trade or business (including the disposal of capital assets or other properties which were acquired and used in such trade or business)."

However, "The exclusion provided by clause (6) of subsection (c) does not apply to any receipts of a taxpayer received as interest or dividends, from sales, other receipts from investments not acquired or disposed of in connection with the taxpayer's regular business, or to bonuses or commissions received by any taxpayer." IC 6-2.1-1-2(d).

Therefore, the issue is whether the \$201,000,000 consisted of money received from doing business in Minnesota or whether it consisted of interest or dividends attributable to an investment in Minnesota Company.

There is no support for the contention that the \$201,000,000 was earned from conducting business within Minnesota. Taxpayer freely admits that the amounts were properly characterized as "interest" and "dividends" received from investing in Minnesota Company.

FINDING

Taxpayer's request for a refund of gross income taxes on the amount of dividends and interest payments received from Minnesota Company is respectfully denied.

VIII. Elimination of Intercompany Transactions Between Members of a Consolidated Gross Income Tax Return – Gross Premium Privilege Tax / Gross Income Tax.

Taxpayer claims that one of its subsidiaries received "administrative fees and interest payments" from life insurance companies which were themselves also taxpayer's subsidiaries. Taxpayer explains that the "vast majority of the [life insurance companies] are either incorporated or registered to do business in Indiana." Taxpayer now requests an adjustment of approximately \$1,000,000 for these intercompany transfers.

Pursuant to IC 6-3-2-2.8, life insurance companies are not subject to the state's adjusted gross income tax. Out-of-state life insurance companies pay Indiana Gross Premium Privilege Tax. IC 27-1-18-2(a). In lieu of paying the gross income tax, domestic life insurance companies may elect to pay Indiana Gross Premium Privilege Tax. *Id.* In order to do so, the domestic insurance company must file a "notice of election." IC 27-1-18-2(b).

Taxpayer's life insurance companies – both domestic and out-of-state – paid Gross Premium Privilege Tax during 1998 and 1999. Taxpayer states that its life insurance companies – at least those which would have otherwise been subject to gross income

tax had they elected otherwise – paid administrative fees and interest payments to another of taxpayer’s subsidiaries. Taxpayer states that these administrative fees and interest payments should be eliminated as intercompany transactions. *See* 45 IAC 1-1-166; 45 IAC 1.1-4-5(a).

Taxpayer’s request for a refund of gross income tax is counter-intuitive and is supported by neither law nor common sense. The life insurance companies were either subject to or elected to pay the Gross Premium Privilege Tax; the life insurance companies were not part of the consolidated gross income tax return. Having paid the Gross Premium Privilege Tax, taxpayer’s request – that it now eliminate intercompany transactions pursuant to the entirely unrelated provisions of the Gross Income Tax law – is unwarranted.

FINDING

Taxpayer’s request to eliminate on its consolidated gross income tax returns intercompany transactions between itself and the life insurance companies is respectfully denied.

DEPARTMENT OF STATE REVENUE

02-20030112.LOF

LETTER OF FINDINGS NUMBER: 03-0112

Gross Income & Adjusted Gross Income Tax For the Years 1998-2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax—Intangible Holding Companies

Authority: Ind. Code § 6-3-2-2; Ind. Code § 6-8.1-5-1; *Bethlehem Steel Corp. v. Ind. Dep’t of State Revenue*, 597 N.E.2d 1327 (Ind. Tax 1992); *aff’d* 639 N.E.2d 264 (Ind. 1994); *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); *Gregory v. Helvering*, 293 U.S. 465 (1935); *Lee v. Comm’r*, 155 F.2d 584 (2d Cir. 1998); *Horn v. Comm’r*, 968 F.2d 1229 (D.C. Cir. 1992); *Comm’r v. Transp. Trading and Terminal Corp.*, 176 F.2d 570 (2nd Cir. 1949); *Geoffrey, Inc. v. S.C. Tax Comm’n*, 437 S.E.2d 13 (S.C. 1993).

Taxpayer maintains that the Department erred when it recomputed taxpayer’s adjusted gross income to include one subsidiary on a consolidated basis.

II. Adjusted Gross Income Tax-Net Operating Losses

Authority: *Hi-Way Dispatch, Inc. v. Indiana Dep’t of State Revenue*, 756 N.E.2d 587 (Ind. Tax 2001); *Phoenix Coal Co. v. Comm’r*, 231 F.2d 420 (2d Cir. 1956); *Geoffrey, Inc. v. South Carolina Tax Comm’n*, 437 S.E.2d 13 (S.C. 1993).

Taxpayer protests the disallowance of net operating loss carryforwards for Taxpayer based on combination of Taxpayer’s returns with a subsidiary.

III. Gross Income Tax—Small Business Companies

Authority: Ind. Code § 6-2.1-2-2; Ind. Code § 6-2.1-3-24.5; I.R.C. § 1361; I.R.C. § 1362; *Ind. Dep’t of State Revenue v. 1 Stop Auto Sales, Inc.* 810 N.E.2d 686 (Ind. 2004).

Taxpayer protests the imposition of gross income tax with respect to two subsidiaries based on their claimed status as small business companies.

IV. Gross Income Tax—Taxability of Intangibles

Authority: 45 IAC 1-1-51; 45 IAC 1.1-6-2; *Geoffrey, Inc. v. S.C. Tax Commission*, 437 S.E.2d 13 (S.C. 1993).

Taxpayer protests the imposition of gross income tax with respect to amounts paid to a subsidiary for the use of its patents and other intellectual property.

V. Gross Income Tax-Leasing Income

Authority: Ind. Code § 6-2.1-1-9; Ind. Code 6-2.1-3-3; *Enterprise Leasing Co. v. Ind. Dep’t of State Revenue*, 779 N.E.2d 1284 (Ind. Tax 2002); *First Nat’l Leasing & Financial Corp. v. Ind. Dept of State Revenue*, 598 N.E.2d 640 (Ind. Tax 1992).

Taxpayer protests the imposition of gross income tax with respect to lease payments for property leased to Indiana customers.

VI. Adjusted Gross Income Tax-Property Factor

Authority: Ind. Code § 6-3-2-2; *Enterprise Leasing Co. v. Indiana Dep’t of State Revenue*, 779 N.E.2d 1284 (Ind. Tax 2002); *Twentieth Century Fox Film Corp. v. Dep’t of Revenue*, 700 P.2d 1035, 1037 (Or. 1985).

Taxpayer protests the inclusion of leased property located in Indiana in the numerator of its property factor for adjusted gross income tax purposes.

VII. 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 an out-of state company in the business of manufacturing and selling forklifts and similar equipment throughout the country. During the years in question, Taxpayer also had three wholly-owned subsidiaries. One of the subsidiaries was engaged in the leasing of Taxpayer's equipment ("Leasing Subsidiary"). A second subsidiary managed Taxpayer's trademarks and patents ("Intangible Subsidiary"). A third subsidiary located in North Carolina was engaged in the manufacture of Taxpayer's products ("NC Subsidiary"). Taxpayer has operated an Indiana sales office for several years and more recently began operations at an Indiana manufacturing facility.

During the years in question, Taxpayer was a small business company within the meaning of Indiana gross income tax laws. However, Taxpayer did not elect S Corporation status for federal income tax purposes.

Taxpayer and Leasing Subsidiary filed consolidated gross income and adjusted gross income tax returns for the years in question. Subsequently, Taxpayer was audited by the Department. The auditor determined that Intangible Subsidiary had nexus with Indiana. As a result, the Department assessed gross income tax against Intangible Subsidiary with respect to its royalty payments. Taxpayer has protested this assessment, arguing that Intangible Subsidiary did not have nexus with Indiana. In the alternative, Taxpayer argues that Intangible Subsidiary's income was not from Indiana sources, and that Intangible Subsidiary was a "small business company" for gross income tax purposes.

Leasing Subsidiary was also assessed gross income tax with respect to its operations. Taxpayer argues that Leasing Subsidiary's leasing income was not subject to gross income tax based on the fact that it was not derived from Indiana sources. In the alternative, Taxpayer argues that Leasing Subsidiary's income was subject to treatment as a "qualified lessor", and that Leasing Subsidiary was a "small business company."

In addition, the Department required the consolidation of Intangible Subsidiary with the other businesses that had previously filed Indiana returns. Taxpayer argues that, since Intangible Subsidiary did not have Indiana nexus, such combination was prohibited. Further, Taxpayer's net operating loss carryforwards from prior periods were disallowed. Taxpayer argues that the Department is estopped from such disallowance. Finally, the Department assessed penalties with respect to the assessment, which Taxpayer has protested.

I. Adjusted Gross Income Tax—Intangible Holding Companies

DISCUSSION

A. Sham transaction

The "sham transaction" doctrine is well 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." *Comm'r v. Transp. Trading and Terminal Corp.*, 176 F.2d 570, 572 (2d Cir. 1949). "Transactions 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. Comm'r*, 968 F.2d 1229, 1236-37 (D.C. Cir. 1992). In determining whether a business transaction was an economic sham, two factors can be considered; "(1) did the transaction have a reasonable prospect, ex ante, for economic gain (profit), and (2) was the transaction undertaken for a business purpose other than the tax benefits?" *Id.* at 1237.

The question of whether or not a transaction is a sham, for purposes of the doctrine, is primarily a factual one. *Lee v. Comm'r*, 155 F.2d 584, 586 (2d Cir. 1998). The taxpayer has the burden of demonstrating that the subject transaction was entered into for a legitimate business purpose. Ind. Code § 6-8.1-5-1(b).

Here, Taxpayer entered into an arrangement that bears almost no relationship to business reality. In order to give Taxpayer's and Intangible Subsidiary's arrangement any credence, several items must be accepted. First, Taxpayer was willing to stay in business despite losing tens of millions of dollars each year. Second, Taxpayer was willing to enter into and stay in an arrangement with a subsidiary wherein the payments made to Intangible Subsidiary were greater than Taxpayer's operating profits. Third, Intangible Subsidiary was able to generate over \$30,000,000 per year from royalties from one corporation (Taxpayer), with a total salary expense for three years that totaled little more than a minimum wage salary for a full-time employee for *one year*, and other non-tax expenses (including, presumably, rent, utilities, and other similar expenses) that totaled just over \$1,200 for the three year period in controversy. Fourth, the intellectual property that Intangible Subsidiary held had value independent of Taxpayer's sales of property. Fifth, the arrangement between Taxpayer and Intangible Subsidiary had no reason to exist after March, 2000, when Intangible Subsidiary was dissolved, but had plenty of reasons to exist prior to March, 2000. The Department is not inclined to accept the validity of this arrangement for tax purposes.

Taxpayer is, of course, entitled to structure its business affairs in any manner it sees fit and to vigorously pursue any tax advantage attendant upon the management of those affairs. However, in determining the nature of a business transaction and the resultant tax consequences, the Department is required to look at “the substance rather than the form of the transaction.” *Bethlehem Steel Corp. v. Ind. Dept. of State Revenue*, 597 N.E.2d 1327, 1331 (Ind. Tax Ct. 1992), *aff’d* 639 N.E.2d 264 (Ind. 1994). The transfer of the intellectual property and the royalty payments were purely matters of “form” and lack any business “substance.”

B. Intangible Subsidiary has Indiana situs

Even if the transaction could not be considered a sham, Intangible Subsidiary’s income was Indiana source income when it engaged in transactions related to “exploiting” intellectual property.

Here, the case *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), though not controlling, is quite persuasive. In that case, a large toy company established a holding company to which it transferred its trademarks. The toy company paid a percentage of its sales to the holding company. The holding company was located in Delaware, but had no employees. *Id.* at 15, n.1. The toy company claimed a deduction for its royalty payments to the holding company for South Carolina corporate income tax purposes, but claimed that none of the royalty payments were South Carolina source income. South Carolina claimed that the holding company had conducted business in South Carolina, while the holding company claimed that taxation of its royalty income by South Carolina was prohibited by the federal constitution pursuant to *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). The court noted that the holding company did business in South Carolina, via the purposeful opening of stores in South Carolina and the toy company’s sales of merchandise at its South Carolina stores, through which the holding company derived its revenues. *Id.* at 16-18. Accordingly, the court held that the taxation of the holding company’s income was permissible under the United States Constitution and South Carolina law. The Court also distinguished *Quill* by noting the holding company’s purposeful activities in South Carolina via sales of merchandise at stores in South Carolina, and by noting that the tax imposed on the holding company was rationally related to the benefits conferred upon the holding company. *Id.*

Intangible Subsidiary was engaged in the business of “managing” intellectual property—property that has no value apart from Taxpayer’s sales of equipment. To state that the intangible income derived from the licensing transactions only took place in Nevada, with a mere \$3,000-\$4,000 of salary expense and \$300-\$500 of expenses other than taxes, did not fairly represent the transaction between Taxpayer and Intangible Subsidiary. Taxpayer manufactured and sold equipment for a business, in this state and several other states, and a few foreign countries. Taxpayer derived the benefit of sales made in Indiana of its equipment. To state that the royalty income was income derived only from Nevada was to very conveniently ignore that the manufacturing, sales and service that made the taxpayer a well-respected national company occurred in many states other than Nevada, and that Intangible Subsidiary’s own revenues for the royalties necessarily derived from the manufacturing and sales that transpired in this state, as well as many other states and countries, rather than just Nevada. Intangible Subsidiary has entered into Indiana, and the tax rationally relates to its activities in Indiana, and accordingly it is proper to include Intangible Subsidiary on a consolidated return. Finally, Taxpayer and Intangible Subsidiary were a unitary business, and accordingly combination was proper under Ind. Code § 6-3-2-2(l) and (p).

FINDING

Taxpayer’s protest is denied.

II. Adjusted Gross Income Tax-Net Operating Losses

DISCUSSION

Taxpayer also protests the disallowance of net operating losses incurred by Taxpayer during prior years. In particular, Taxpayer has noted that the Department allowed the carrybacks and carryforwards of net operating losses from 1992 to 1997, the period for which Taxpayer had been previously audited.

While Indiana statutes and case law have not dealt with this particular situation, federal law governing net operating losses have dealt with this situation. In *Phoenix Coal Co. v. Comm’r*, 231 F.2d 420 (2d Cir. 1956), a corporation incurred a net operating loss in 1947. The corporation carried back its net operating losses to eliminate its 1945 income and reduce its 1946 income. The corporation incurred a further net operating loss in 1948, which served to eliminate its 1946 income.

The Commissioner reviewed the corporation’s returns. Upon review of the corporation’s returns, the Commissioner determined that the corporation had underreported its 1945 income. Accordingly, the Commissioner redetermined the amount of net operating losses that could be carried forward to 1946, and assessed additional tax for that year. At the time of the assessment, the statute of limitations for imposition of additional tax for 1945 had passed, though not for 1946. The court held that, though taxes for 1945 could not be assessed due to the passing of the statute of limitations, the income for 1945 could be redetermined to compute the proper amount of net operating losses allowable for 1946. *Id.* at 421-422.

Here, Taxpayer’s contentions with respect to the net operating loss carryforwards cannot be accepted. The Department has sought to revisit the determinations of the proper amount of net operating losses, along with carryforwards and carrybacks, for the prior audit period and any previous years solely for purposes of determining the proper amount of income subject to tax for 1998 to 2000, just as the Commissioner in *Phoenix Coal* recomputed the corporation’s income for 1945 to determine the proper income for 1946. This does not permit assessment any year prior to 1998, just as the Commissioner’s redetermination for 1945 did not permit assessment for that year. Thus, the Department was correct in reviewing and redetermining the net operating loss carryforwards

available for the years in question.

Taxpayer further argues that the Department is estopped from disallowing the net operating loss carryforwards from previous years that had been previously approved by a Department auditor. The elements of an estoppel defense are: (1) a representation or concealment of material fact; (2) made by a person with knowledge of the fact and with the intention that the other party act upon it; (3) to a party ignorant of the fact; (4) which induces the other party to rely or act upon it to his detriment. *Hi-Way Dispatch, Inc. v. Indiana Dep't. of State Revenue*, 756 N.E.2d 587, 598 (Ind. Tax 2001) (citing *Salin Bancshares, Inc. v. Indiana Dep't of Revenue*, 744 N.E.2d 588, 592 (Ind. Tax 2000)).

Here, the Department apparently allowed a net operating loss. However, Taxpayer did not present any information that would have permitted the Department to review the facts and circumstances of the previous audit, such as the agreement between Intangible Subsidiary and Taxpayer (indeed, it appears that the audit did not even mention Intangible Subsidiary). The Department did not intend Taxpayer to rely on that allowance to affect its normal business behavior, nor did Taxpayer rely on that allowance in its business structure or behavior in the years. Accordingly, the Department is not estopped from disallowing the net operating losses for the period from 1998 to 2000.

Taxpayer also argues that the net operating losses should be permitted prior to the 1997 (Taxpayer's words) decision in *Geoffrey*. However, the decision was decided in 1993. Further, while the application of the decision to the particular fact situation may have been a first, the *Geoffrey* decision cited case law from states back to 1979, *Geoffrey*, 437 S.E.2d at 16 (citing *American Dairy Queen Corp. v. Taxation and Revenue Dep't*, 605 P.2d 251 (N.M. Ct. App. 1979); *Aamco Transmissions, Inc. v. Taxation and Revenue Dep't*, 600 P.2d 841 (N.M. Ct. App. 1979)), and Supreme Court jurisprudence back to as early as 1920, *Id* at 17, for the proposition that intangibles can be taxed outside a corporation's commercial domicile. As such, Taxpayer has misstated the date of a court opinion, while ignoring the background cases that led to the court decision, in order to attempt to force the Department to accept an artifice of Taxpayer's own creation.

FINDING

Taxpayer's protest is denied.

III. Gross Income Tax-Small Business Companies

DISCUSSION

As a general rule, non-resident corporate taxpayers are subject to gross income tax on their gross receipts derived from businesses and activities conducted in Indiana. Ind. Code § 6-2.1-2-2(a)(2). However, under Ind. Code § 6-2.1-3-24.5(b), a corporation which qualifies as a small business corporation is exempt from gross income tax. For gross income tax purposes, a small business corporation is defined as having the same definition that term has in I.R.C. § 1361(b). Ind. Code § 6-2.1-3-24.5(a). As a general rule, exemption statutes are to be strictly construed against the person claiming the exemption. *Ind. Dep't of State Revenue v. I Stop Auto Sales, Inc.* 810 N.E.2d 686 (Ind. 2004) (citing *General Motors Corp. v. Ind. Dep't of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax 1991), *aff'd* 599 N.E.2d 588 (Ind. 1992)).

Taxpayer qualified as a small business corporation within the statutory definition of I.R.C. § 1361(b)(1). However, Taxpayer was not an S-Corporation due to the fact that it had not elected such status under I.R.C. § 1362(a).

Intangible Subsidiary and Leasing Subsidiary were not small business corporations due to the fact that they have a corporate shareholder, which renders them ineligible for small business corporation status under I.R.C. § 1361(b)(1)(B), which limits the scope of permissible shareholders to various persons or entities, but generally does not permit ownership by another for-profit corporation.

Taxpayer maintains that, because the Taxpayer is eligible for S-Corporation treatment within I.R.C. § 1361(b), Intangible Subsidiary and Leasing Subsidiary were eligible by virtue of I.R.C. § 1361(b)(3), which provides that domestic corporations wholly owned by an S-Corporation are disregarded as separate entities, and treated as part of the parent S-Corporation for tax purposes. However, at the very least, such status requires the parent corporation elect to be treated as an S-Corporation, which Taxpayer did not do in this case. Thus, Intangible Subsidiary and Leasing Subsidiary were not small business corporations within the meaning of Ind. Code § 6-2.1-3-24.5(b), and the exemption is not applicable.

FINDING

Taxpayer's protest is denied.

IV. Gross Income Tax—Taxability of Intangibles

DISCUSSION

Taxpayer protests the imposition of gross income tax with respect to its royalty payments made to Intangible Subsidiary located in Nevada.

In this case, two issues must be resolved:

1. Did Intangible Subsidiary have an Indiana situs for its intangibles?
2. Is the whole transaction a sham transaction?

With respect to situs, Taxpayer argues that the intangibles formed an integral part of a trade or business situated and regularly conducted outside Indiana, noting the location of Intangible Subsidiary in Nevada. According to Taxpayer, under Department regulations, the intangible income for Intangible Subsidiary should be attributed to that location.

However, it cannot be said that this is an entirely accurate assessment of Taxpayer's arrangement. Taxpayer's arrangement basically works in this manner: Taxpayer makes a sale of equipment to retailers or customers. Taxpayer in turn took the money and paid to Intangible Subsidiary a percentage of that money for the "right" to use Taxpayer's own name. By virtue of its control of Taxpayer's name and its exploitation in Indiana, Intangible Subsidiary acquired an Indiana situs.

Taxpayer argues that the auditor's reliance on the *Geoffrey* case cited previously is misplaced, first by noting that the case was decided in another state, and second by noting the regulations stated above. While *Geoffrey* is persuasive rather than mandatory authority in Indiana, the reasoning that the intellectual property has an Indiana situs in this circumstance is worthy of discussion. In the current case, Intangible Subsidiary only derived income upon the sale of goods. This is very similar to the intangible holding company in *Geoffrey*, which the court noted derived its income not from the mere holding of a piece of paper, but rather from retail transactions that the retailer purposely sought. Further, unlike a conventional franchise arrangement in which a holder of a name agrees to allow unrelated third parties to use its name, Intangible Subsidiary only transacted with Taxpayer. To the extent that Intangible Subsidiary yielded its "royalties" as a result of Indiana sales, the intangible formed an integral part of a business regularly carried on in Indiana; thus, the intangibles had a business situs in Indiana, and accordingly were properly subject to Indiana gross income tax. 45 IAC 1-1-51 (repealed effective January 1, 1999); 45 IAC 1.1-6-2 (effective January 1, 1999). Further, given that no exemption or deduction exists for gross income received in a sham transaction, then the income was still taxable, notwithstanding the disregard for the transaction otherwise for tax purposes.

Taxpayer further protests the imposition of gross income tax with respect to royalties derived from sales to third parties into Indiana and from sales by NC Subsidiary into Indiana. However, Taxpayer, with the relevant information in its hands that would permit it to state its income from sales and income from royalties from Indiana sales, in interstate commerce or otherwise, as opposed to any other source, failed to do so. Accordingly, the Department's assessment has not been shown to be incorrect.

FINDING

Taxpayer's protest is denied.

V. Gross Income Tax-Leasing

DISCUSSION

Leasing Subsidiary argues that the gross income from Leasing Subsidiary's leasing activities is not subject to gross income tax. In particular, Leasing Subsidiary argues that its leasing transactions took place outside Indiana, and accordingly its income is exempt as being in interstate commerce. Ind. Code § 6-2.1-3-3. In particular, Leasing Subsidiary argues that the cases of *Enterprise Leasing Co. v. Ind. Dep't of State Revenue*, 779 N.E.2d 1284 (Ind. Tax 2002) and *First Nat'l Leasing & Financial Corp. v. Ind. Dept of State Revenue*, 598 N.E.2d 640 (Ind. Tax 1992) are analogous to Leasing Subsidiary's situation.

Leasing Subsidiary's arrangement differs from the leasing arrangements exempted from taxation in *Enterprise Leasing* and *First National* in one crucial respect. Unlike the lessors in those cases, who could not control where the leased property was transported, *Enterprise Leasing*, 779 N.E.2d at 1290-1293; *First Nat'l Leasing & Financia*, 598 N.E.2d at 643-645, a lessee in Leasing Subsidiary's arrangement could not remove the property from the location designated by the lessee without Leasing Subsidiary's consent. As such, Leasing Subsidiary exerts control of the property in Indiana sufficient to permit taxation of its gross income derived from leasing its equipment to customers in Indiana.

In the alternative, Leasing Subsidiary argues that it is subject to tax treatment as a qualified lessor under Ind. Code § 6-2.1-1-9(a)(2). Under that provision, a taxpayer that:

- (A) Acquires title to tangible personal property solely for the purpose of leasing it to others;
- (B) Has no other purpose of ownership in the property; and
- (C) Leases the property to another under a lease agreement which has a term of at least five (5) years and which requires the lessee to make rental payments, over the term of the lease, equal to the sum of: (i) the cost of the property, plus (ii) finance charges.

is considered a qualified lessor. Accordingly, under Ind. Code § 6-2.1-1-9(b), a qualified lessor is only subject to gross income tax on "the excess of the total rental payments received under a lease described in subsection (a) over the cost of the tangible personal property so leased."

However, Ind. Code § 6-2.1-1-9(e) states:

A taxpayer that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, an individual or other organization that manufactures, or is engaged in the business of selling, as a distributor or at wholesale or retail or otherwise, property covered by any lease agreement described in subsection (a), is not a qualified lessor.

Here, Taxpayer and Leasing Subsidiary are parent and subsidiary; therefore, Leasing Subsidiary is controlled by Taxpayer. Taxpayer manufactures and sells the equipment that Leasing Subsidiary leases. Accordingly, Leasing Subsidiary does not qualify for treatment as a qualified lessor.

FINDING

Taxpayer's protest is denied.

VI. Adjusted Gross Income Tax-Property factors

DISCUSSION

Taxpayer further protests the inclusion of the value of Leasing Subsidiary's leased property in Taxpayer's property numerator. Taxpayer argues that, under the Tax Court's holding in *Enterprise Leasing*, Taxpayer is required to own *and* use the property in question in order for the property to be included in its property numerator for adjusted gross income tax purposes.

Under Ind. Code § 6-3-2-2(c),

[t]he property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

First, a review of the audit report with respect to Taxpayer shows minimal changes to Taxpayer's property factors, which leads to the assumption that Taxpayer believed that the leased property was owned and used by it in Indiana.

Second, if the Department accepts Taxpayer's argument, it leads to a potentially absurd result. Taxpayer is based outside Indiana. It leases its property to Indiana customers. The property in question is owned by Taxpayer. However, Taxpayer does not use the property anywhere. The acceptance of Taxpayer's argument leads to leased property being in no state's numerator and every state's denominator—a disturbing violation of the overarching policy of the Uniform Division of Income for Tax Purposes Act (UDITPA). See *Twentieth Century Fox Film Corp. v. Dep't of Revenue*, 700 P.2d 1035, 1037 (Or. 1985). (The basic purpose of UDITPA is to tax exactly 100% of a corporations' income) While Indiana has not explicitly adopted UDITPA, Indiana's statutes closely track UDITPA.

Taxpayer clearly owns the leased property. The leased property is in Indiana. To prevent the absurd result that Taxpayer asks us to reach, an either-or approach—"owned", or "rented and used" with respect to the "owned or rented and used in this state" is the only logical construction that can result in Taxpayer's situation. Accordingly, the property should be included in Taxpayer's numerator.

Further, even accepting Taxpayer's argument, under Leasing Subsidiary's arrangement, a lessee in Leasing Subsidiary's arrangement could not remove the property from the location designated by the lessee without Leasing Subsidiary's consent. As such, Leasing Subsidiary has a degree of control over the property—uses the property, though it is in the hands of a third party—within Indiana within the meaning of Ind. Code § 6-3-2-2(c).

Finally, even if Taxpayer's argument is to be accepted with respect to the numerator, Leasing Subsidiary's leased property is not owned *and* used by it anywhere, and accordingly is not part of the equal and opposite statutory inclusion in the denominator as provided by statute. Accordingly, if Taxpayer's argument with respect to the numerator is accepted, the property must also be removed from Taxpayer's denominator.

FINDING

Taxpayer's protest is denied.

VII. 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 acted in a manner with respect to the tax laws of this state that leads the Department to believe that its actions were a negligent disregard of those laws at best. Accordingly, the penalty must stand.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220030213.LOF

LETTER OF FINDINGS NUMBER: 03-0213

Gross Income Tax

For the Years 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Gross Income Tax—Small Business Exemption

Authority: IC 6-8.1-5-1(b); IC 6-2.1-2-2; IC 6-2.1-3-24.5; IRC § 1361.

Taxpayer protest the imposition of gross income tax upon Taxpayer's subsidiaries.

II. Gross Income Tax—Proceeds from Real Estate Property Sale

Authority: IC 6-2.1-1-2(c)(1); IC 6-2.1-3-16; IC 14-34-1-3; IC 14-34-3-1; IC 14-34-3-12; IC 14-34-6-1; IC 14-34-6-13; IC 6-2.1-1-2(b); 45 IAC 1.1-2-19(b); Department of Revenue v. 1 Stop Auto Sales, Inc., 810 N.E.2d 686 (Ind. 2004); Cambria Iron Co., v. Union Trust Co., 154 Ind. 291, 55 N.E. 745 (1899)

Taxpayer protests the disallowance by the Department of a reduction of gross income tax to reflect mortgage and reclamation liabilities.

III. Gross Income Tax—Receipts from sales in brokerage or agency agreements

Authority: Department of the Treasury v. Ice Service, Inc., 41 N.E.2d 201 (Ind. 1942); (Ind. Tax 2002); Policy Mgmt. Sys. Corp. v. Department of State Revenue, 720 N.E.2d 20 (Ind. Tax 1999).

Taxpayer protests the assessment of gross income tax on the entire amount paid to it for the sale of coal—instead of gross income tax assessed only on the markup paid to it.

IV. Tax Administration—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) and (c).

Taxpayer protests the imposition of a 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer includes a parent holding company and two subsidiaries. The subsidiary filed on a consolidated basis with Parent. The Department conducted an audit of Taxpayer's Indiana operations. Proposed assessments of additional gross income tax, interest, and penalties were issued.

I. Gross Income Tax—Small Business 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). IC 6-2.1-2-2 [repealed effective January 1, 2003] imposed a gross income tax on the receipt of the entire taxable gross income of a resident or domiciled Indiana taxpayer. However, under IC 6-2.1-3-24.5(b), a corporation which qualifies as a small business corporation was exempt from Gross Income Tax. IC 6-2.1-3-24.5(a) stated that for Gross Income Tax purposes, a small business corporation has the same definition as given in I.R.C. § 1361(b).

Taxpayer Parent qualified as a small business corporation within the statutory definition of I.R.C. § 1361(b)(1). However,

Taxpayer Parent was not an S-corporation because Taxpayer Parent terminated its Subchapter S election effective January 1, 1998 and became a C-corporation.

The Taxpayer Subsidiaries were not small business corporations due because Taxpayer Subsidiaries had a C-corporation shareholder, Taxpayer Parent. IRC § 1361(b)(1)(B). This rendered the Taxpayer Subsidiaries ineligible for I.R.C. § 1361(b) small business corporation status.

Taxpayer Parent maintains that because it was eligible for S-corporation treatment within I.R.C. § 1361(b), Taxpayer Subsidiaries were eligible for S-corporation treatment by virtue of I.R.C. 1361(b)(3)—which provides that domestic corporations wholly owned by an S-corporation are disregarded as a separate entity and are treated as part of the parent S-corporation for tax purposes. Such status required Taxpayer Parent to elect to be treated as an S-corporation—which Taxpayer Parent terminated effective January 1, 1998. The effect of this is: (1) Taxpayer Subsidiaries were not small business corporations within the meaning of the statute; (2) Gross income tax may be assessed.

FINDING

For the reasons discussed above, the Department denied Taxpayer's protest.

II. Gross Income Tax—Proceeds from Real Estate Property Sale

DISCUSSION

Taxpayer sold one of its coal mines. Receipts from the sale were used to pay off collateralized lines of credit. In addition, the purchaser of the mine assumed the reclamation liability.

IC 6-2.1-3-16 stated that amounts received from sales of real estate are exempt from gross income tax to the extent a mortgage or similar encumbrance exists on the real estate at the time of its sale. 45 IAC 1.1-2-19(b) stated:

(b) The amount of any receipts that represent a mortgage or similar encumbrance, but not any interest due thereon, that exists on real estate at the time of its sale is exempt from the gross income tax under the following circumstances:

- (1) The mortgage is paid off as a result of the sale.
- (2) The mortgage is assumed by the purchaser.
- (3) The property is transferred subject to the mortgage.

...

Here the amount that Taxpayer received was used to pay off a debt secured not only by real estate, but also by items of tangible personal property and by other executed instruments. Given IC 6-2.1-3-16 is an exemption statute strictly construed against Taxpayer, the amounts in question first must be construed as paying off items other than the real estate, then the real estate. Taxpayer has not provided sufficient documentation to establish that the payoff was greater than the value of the tangible personal property and other instruments the Taxpayer provided as security; and accordingly is denied with respect to this issue.

The property was transferred subject to the reclamation liability. The Indiana General Assembly has promulgated in IC 14-34 statutes regulating surface coal mining and reclamation. The statutes extend the requirements of the federal Surface Mining Control and Reclamation Act of 1977. *See* IC 14-34-1-3. Surface mining of coal is permitted only if a valid reclamation permit is secured. *See* IC 14-34-3-1. IC 14-34-3-12 requires that a reclamation plan be developed and submitted with the reclamation permit. IC 14-34-6-1 requires that a bond for performance be posted with the state; additional bonds are to be filed to cover additional reclamation costs due to continued mining. The reclamation bond is released upon the successful completion of reclamation. IC 14-34-6-13. The effect of these statutes is to ensure that the reclamation of the land is performed. The bond provides insurance—if the mining company does not reclaim the land, the bond will provide the necessary funds to reclaim the land.

Those who mine coal are required to rehabilitate the land after enjoying the mineral interest. Reclamation is a cost of doing business. IC 6-2.1-1-2(b) stated, that in general, no deduction from a taxpayer's gross income may be taken for return of capital invested, cost of property sold, cost of materials used, labor costs, interest, discounts, commissions paid or credited, losses, or any other expense paid or credited. The Indiana Supreme Court has stated that "ambiguous exemption statutes are to be strictly construed against the taxpayer." *Department of Revenue v. 1 Stop Auto Sales, Inc.*, 810 N.E.2d 686, 689 (Ind. 2004). The Indiana Supreme Court also 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). Reclamation is a requirement of law and no statute allows an exemption of those costs from inclusion as taxable gross income.

FINDING

For the reason discussed above, the Department denies Taxpayer's protest.

III. Gross Income Tax—Receipts from sales in brokerage or agency agreements

DISCUSSION

Upon the sale of the mine, Taxpayer entered into an agreement with the purchaser to supply coal to two of Taxpayer's customers. These customers had entered into long-term coal supply agreements with Taxpayer when it owned the mine. Taxpayer invoiced the customer for the coal supplied by Producer. The customer remitted its payment to Taxpayer, who then paid Producer for the coal. Taxpayer kept an amount of the payment for itself.

The Indiana Supreme Court in *Department of the Treasury v. Ice Service, Inc.*, 41 N.E.2d 201 (Ind. 1942) examined an agency

relationship as it relates to gross income tax. The court stated that the question of whether an agency relationship exists is ordinarily a question of fact, which may be established by direct or circumstantial evidence. *Id.* at 203. The creation of the agency relationship will depend upon the intention of the parties. *Id.* The court in Ice Service used a flexible interpretation of agency relationship to encompass the parties' business agreement. Taxpayers are not subject to gross income tax on income they receive in an agency capacity. See Policy Mgmt. Sys. Corp. v. Department of State Revenue, 720 N.E.2d 20, 23 (Ind. Tax 1999). Before a taxpayer may deduct income received in an agency capacity, two requirements must be met:

- (1) the taxpayer must be a true agent, and
- (2) the agent must have no right, title, or interest in the money or property received or transferred as an agent.

Id. A taxpayer is not subject to gross income tax on receipts received on behalf of a third person. *Id.*

In this case, the agreement signed between Taxpayer (Seller) and Producer states that title and risk of loss passes from Producer to Seller (Taxpayer), FOB Mines. Given that the coal is shipped directly to customers, the intent of the parties needs to be determined. In Ice Services, the court stated that it will ignore apparently inconsistent language and look to the real nature of the agreement between the parties: (*i.e.* what is the real purpose of the agreement and from the nature of the transaction, what must be in the minds of the parties). At the hearing, Taxpayer could not explain why the coal selling agreement stated that Taxpayer takes title to the coal. The Department confirmed that Taxpayer and Producer are true third-parties and is satisfied that the coal selling agreement is an arms-length transaction because there were no common business owners between Taxpayer and Producer.

The second requirement of agency named in Policy Mgmt. Sys. Corp. states that the agent must have no title in the property transferred as an agent. The coal selling agreement stated that title passes to Taxpayer. Taxpayer stated at the hearing that it earned a commission of only \$0.50 per ton. The Department noted this and investigated the agreements between Taxpayer and Producer and the agreements between Taxpayer and customers. While the use of the term agent need not be stated for an agency relationship to exist, other evidence of the relationship will prove agency. But no such evidence has been found.

The audit report stated that when Taxpayer sold the mine to Producer under the pre-existing contracts, Taxpayer was still obligated to provide coal to certain customers in 1999 and 2000. Taxpayer stated it began brokering coal from Producer to meet those contractual obligations.

A reading of the original contracts between Taxpayer and its customers stated that the coal to be supplied is to be provided from a specific mine. The contracts indicated that the owner of the mine is not the seller of the coal. In those contracts, the owner of the mine is named as Taxpayer's Subsidiary 1 and the seller of the coal is named as Taxpayer's Subsidiary 2. So, in effect, while the revenues ended up in the pocket of Taxpayer (the parent holding company) the mine was owned by one subsidiary and the coal was sold by another subsidiary. When the mine was sold, it did not change the fact that Subsidiary 2 (the sales subsidiary) was still obligated to make good on the agreements, despite the fact that Subsidiary 1 (the owner subsidiary) no longer controlled and operated the mine.

When the mine was sold, the contracts to supply the customers could have undergone novation—substituting Producer for Taxpayer. But this did not occur. Taxpayer's Subsidiary 2 remained obligated to see that coal was supplied to the customers. This explains why the contract between Taxpayer and Producer stated that title passes to Taxpayer. The whole effect of the arrangement is that Taxpayer continued to supply coal to the customers. Taxpayer and Producer made an agreement which allowed Taxpayer to continue to receive coal supplies to sell to the customers. Taxpayer did not receive commissions for brokering; Taxpayer received coal supplies from Producer and their agreement fixed the markup margins. Taxpayer was not acting as an agent for Producer; Taxpayer was continuing the business of Subsidiary 2 despite the fact that Subsidiary 1 no longer had a mine to supply coal.

FINDING

For the reasons stated above, the Department denies Taxpayer's protest.

IV. Tax Administration—Penalty

DISCUSSION

When the Department issued the assessments, it imposed a 10% negligence penalty. Taxpayer protested the imposition of the penalty. 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.

Under 45 IAC 15-11-2(b), Taxpayer incurred a deficiency which the Department determined was due to negligence and will be subject to a penalty under IC 6-8.1-10-2.1(a). In its protest letter, Taxpayer requested a waiver of penalties—but provided no documentation to establish reasonable cause. Taxpayer supplied no affirmative explanation to the Department in its letter. At the hearing, Taxpayer provided no affirmative explanation to establish reasonable cause. Since, Taxpayer has not affirmatively established that its failure to pay the deficiency was attributed to reasonable cause and not negligence, as required by 45 IAC 15-11-2(c), the Department will impose the 10% negligence penalty.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20030317.LOF

LETTER OF FINDINGS NUMBER: 03-0317

Individual Income Tax

For the Years 1997-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration - Best information available

Authority: Ind. Code § 6-3-1-3.5; Ind. Code § 6-8.1-5-1; Ind. Code § 6-8.1-5-2; Ind. Code § 6-8.1-5-4.

Taxpayer protests the assessment of adjusted gross income tax, based on the Department's determination of its gross receipts.

II. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2(b).

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayers are a married couple whose primary source of income is derived from sales of rental booths and food sales during festivals held during holidays. During the years in question, Taxpayers filed federal and state income tax returns. As a result of Department audit, Taxpayers' gross sales were increased substantially, with an allowance made for expenses associated with food sales. Taxpayer protested the assessment, both for the amount and the timeliness of the assessment.

I. Tax Administration-Best information available

DISCUSSION

Taxpayers argue that the assessment of additional income was too high. In addition, Taxpayers note that they filed federal income tax returns for the years in question, and their state income tax returns matched their federal income tax returns. While federal adjusted gross income is the starting point for determining an individual's Indiana income tax liability per Ind. Code § 6-3-1-3.5(a), the Department's audit is presumed to be correct. Ind. Code 6-8.1-5-1(b).

Under Ind. Code § 6-8.1-5-4, a taxpayer is required to keep records including "all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks." Here, Taxpayer has submitted handwritten records for the past several years. While these records provide a modicum of effort with respect to record keeping, a third-party record of Taxpayers' activities—e.g., bank account records showing deposits and withdrawals or some other similar records—would be necessary to verify Taxpayers' records under these circumstances. However, Taxpayers have provided sufficient information to conclude that several deductions listed on their federal income tax return in arriving at adjusted gross income were not considered by the auditor, and accordingly those deductions should be permitted.

Taxpayers have further protested the assessment of income tax for the years from 1997 to 1999, noting that the years are beyond the normal three-year statute of limitations provided by Ind. Code § 6-8.1-5-2(a). In the case of underreporting one's income by at least twenty-five percent, the statute of limitations is extended to six years. Ind. Code § 6-8.1-5-2(b). Here the amount of underreported income can only be determined after further review, and accordingly is either sustained or denied based on that determination.

FINDING

Taxpayers' protest is sustained to the extent of the excess deduction and to the extent that Taxpayers' income was not underreported by at least 25% for the years from 1997 to 1999. Taxpayers' protest is otherwise denied.

II. Tax Administration - Penalty**DISCUSSION**

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides in 45 IAC 15-11-2:

(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.

A basic duty of care exists for all taxpayers, from individuals of the most modest means to the largest corporations. That duty is one of knowledge of tax laws, knowledge of payment and filing deadlines, and record keeping of one's own business and personal affairs sufficient to retrace their prior financial transactions as necessary for a reasonable period of time. To impute less of a duty is to allow for carelessness or even intentional ignorance to be a defense-something that no effective legal system can permit. If a taxpayer is not certain of the scope of that duty, professional advice and even the occasional question to the Department is available. Taxpayer's actions did not meet the standard necessary to justify penalty waiver.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20030318.LOF

LETTER OF FINDINGS NUMBER: 03-0318**Sales/Use Tax****For the Years 1992-2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Tax Administration - Best information available**

Authority: Ind. Code § 6-2.5-4-4; Ind. Code § 6-8.1-5-1; Ind. Code § 6-8.1-5-4

Taxpayer protests the imposition of sales tax, with respect to its increased gross receipts and with respect to the rental of booths.

II. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2(b).

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is an individual who rents booth space to various vendors on holidays and other special occasions. During these times, the vendors also sell food to visitors. Taxpayer either did not file returns or filed returns with all zeroes for the years in question.

The Department audited Taxpayer for the years in question. During those years, Taxpayer did not provide adequate records to the auditor. As a result, Department's auditor based its audit on estimates of number of booths rented and amounts of food sold. Taxpayer protested the audit with respect to the adequacy of the information, timeliness of assessment, and the applicability of sales tax to its rentals of booths.

I. Tax Administration-Best information available**DISCUSSION**

With respect to the information the Department used, “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.” Ind. Code § 6-8.1-5-1(b). Under Ind. Code § 6-8.1-5-4, a taxpayer is required to keep records including “all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.”

Here, Taxpayer has submitted handwritten records for the past several years. While these records provide a modicum of effort with respect to record keeping, a third-party record of Taxpayer’s activities—e.g., bank account records showing deposits and withdrawals or some other similar records—would be necessary to verify Taxpayer’s records under these circumstances. This not appearing in the file, Taxpayer’s protest is denied.

Taxpayer also protests whether the booths it rented were subject to sales tax. Ind. Code § 6-2.5-4-4 (a) provides:

A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person:

- (1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and
- (2) if the rooms, lodgings, and accommodations are located in a hotel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

Here, Taxpayer argues that its provision of booths did not constitute regularly furnishing those items for consideration. In particular, Taxpayer notes that the booths were rented for only 21 days per year. However, Taxpayer did not conduct this business on an irregular basis or as an extremely infrequent transaction; Taxpayer consistently rented a number of booths for several years, though only around holidays. Taxpayer’s rentals of booths were “regularly furnished” within the meaning of the statute, and accordingly Taxpayer is denied.

FINDING

Taxpayer’s protest is denied.

II. Tax Administration - Penalty**DISCUSSION**

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides in 45 IAC 15-11-2:

(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.

A basic duty of care exists for all taxpayers, from individuals of the most modest means to the largest corporations. That duty is one of knowledge of tax laws, knowledge of payment and filing deadlines, and record keeping of one’s own business and personal affairs sufficient to retrace their prior financial transactions as necessary for a reasonable period of time. To impute less of a duty is to allow for carelessness or even intentional ignorance to be a defense—something that no effective legal system can permit. If a taxpayer is not certain of the scope of that duty, professional advice and even the occasional question to the Department is available. Taxpayer’s actions did not meet the standard necessary to justify penalty waiver.

FINDING

Taxpayer’s protest is denied.

DEPARTMENT OF STATE REVENUE0420030362;
0420030395.LOF**LETTER OF FINDINGS NUMBER: 03-0362 and 03-0395****Sales and Use Tax****For the Periods 2000, 2001, and 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Sales Tax—Disputed Items**

Authority: IC 6-8.1-5-1(b).

Taxpayer protests the inclusion of particular entries.

II. Sales Tax—Items purchased for resale

Authority: IC 6-2.5-5-8(b).

Taxpayer protests the inclusion of assessment on items it claims were purchased for resale.

III. Sales Tax—Resale to Tax-exempt purchasers

Authority: IC 6-2.5-8-8; IC 6-2.5-3-7(b).

Taxpayer protests the inclusion of assessment entries on items it claims were sold to tax-exempt organizations.

STATEMENT OF FACTS

Taxpayers are Tech and Consulting. Because the enterprises are separate, but linked, this letter of findings includes discussion of both Tech and Consulting, so as to dispose of the issues in a unified manner.

Tech provides computer training and classroom instruction. The instructors, books, and computer supplies are provided by Consulting. The Department performed an audit of Tech and Consulting. On audit, adjustments were made to sales and use tax.

Taxpayer filed a protest and the Department held a hearing.

AGREED RESOLUTIONS

Taxpayer agrees \$187.10 of use tax is due on taxable sales. See page 3 of the Consulting audit summary.

The Department agrees that ASI and Asia Source are duplicate entries. Only one should be listed. The Department will remove the Asia Source entries and evaluate the ASI entries. Taxability is another issue to be determined. See page 7 of the Consulting audit summary.

The Department agrees that the Crucial Tech amount of \$208.79 should be removed. The item was purchased, returned, and credited. See page 8 of the Consulting audit summary.

The Department agrees that LASTAR is the billing company for CTG. The listings are duplicates and need to be removed. See page 8 and 10 of the Consulting audit summary.

The Department agrees that VTech Data—reference 1-W404891—needs to be removed because the laptop was returned. See page 13 of the Consulting audit summary.

I. Sales Tax—Disputed 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).

Taxpayer submitted documentation of duplicate entries. One entry is the invoice for the item. The other entry is the billing of the item, including shipping. Consulting paid for its items from suppliers using a credit card. The duplicate entries should be removed. The taxability of the items has to be determined.

The entry on page 10 of the Consulting audit summary: 11/22/2000 40-48426-11 Ingram Micro \$6,858.00 should be removed because the item was returned as a faulty projector.

The entries on page 10 of the Consulting audit summary: 05/02/2000 69216GB005X0S Intuit Software Supply \$131.24 and 08/12/2000 9621KH00MDPA Intuit Software Supply \$70.86 should be removed because the taxpayer provided documentation that it paid sales tax on the purchase.

The entry on page 11 of the Consulting audit summary: 12/04/2000 STMT Nova Solutions Inc \$7,563.80 should be removed because it partially duplicates 11/30/2000 49035 Nova \$14,563.80.

The entry on page 13 of the Consulting audit summary: 08/19/2000 STMT VEIT Certification \$55.00 is taxable. The fact it is an online testing service does not exclude it from sales tax. The test and grading were sold and billed as a unitary sale.

Likewise, the entry on page 13 of the Consulting audit summary: 08/21/2000 1034KVD412PW View \$2,522.00 is taxable. The fact it is an online testing service does not exclude it from sales tax. The test and grading were sold and billed as a unitary sale.

The entry on page 14 of the Consulting audit summary: 04/04/2000 11044 South Bend Chocolate Company \$980.80 should be removed because Taxpayer paid sales tax on the items when purchased. Likewise, so should the entries on page 29 of the Consulting audit summary: 06/30/2002 26002 \$151.20 and 11/20/2002 27844 \$901.80.

The entry on page 17 of the Consulting audit summary: 08/17/2001 CWH65201 ADI \$1,491.20 should be removed because Consulting returned the item.

The entries on page 17 of the Consulting audit summary for All Pro Construction should be removed because these were payments for services. It appears that any sales tax due was listed and billed.

The entry on page 17 of the Consulting audit summary: 03/06/2001 Cody Soft \$999.99 is taxable because the purchase of web hosting is a purchase of tangible personal property—a domain and associated web page code.

The entry on page 19 of the Consulting audit summary: 1/22/2001 Network Solutions \$70.00 is taxable because the purchase of a domain is the purchase of tangible personal property.

The entry on page 20 of the Consulting audit summary: 12/28/2001 Security Alarm Expense \$940.97 is taxable. Taxpayer has not provided an invoice to demonstrate what was provided and billed. Taxpayer stated that the alarm system was repaired. This does not demonstrate what was provided and under what terms; it is possible that tangible personal property was transferred to Taxpayer as part of the repair services. Absent evidence Taxpayer paid a sales tax on the entry or that the bill is for services alone, the Department upholds the assessment.

The entry on page 21 of the Consulting audit summary: 03/26/2001 S1616 SMR of Indiana, Inc \$2,210.00 should be removed. This is a partial payment on an invoice statement that cross-references with the entry on page 5 of the Tech audit summary: 01/04/2001 STMT SMR of Indiana, Inc. \$3,833.50.

The entry on page 21 of the Consulting audit summary: 02/21/2001 IWIN Tech Data \$240.00 should be removed. This is a partial payment of an order listed as the entry on page 21 of the Consulting audit summary: 02/20/2001 0495851 Tech Data \$743.00.

The entry on page 26 of the Consulting audit summary: 10/17/2002 Microsoft Online Srvs \$65.85 is not taxable because it is a service.

The entry on page 8 of the Consulting audit summary: 11/28/2000 0073926 Chief Manufacturing, Inc \$2,238.00 should be corrected. The invoice lists the total as \$563.26, not \$2,238.00.

The entry on page 8 of the Consulting audit summary: 06/06/2000 001091389 Comstor \$170.00 should be removed. A credit memo indicates Consulting returned and received a credit for items.

The entry on page 12 of the Consulting audit summary, 07/26/2000 GXML SHC*SMARTHOUSE COM \$1,278.84 should be removed. There is no record of this amount as a charge on Taxpayer's credit card, based on the invoice statement from the credit card company.

The entry on page 17 of the Consulting audit summary: 03/03/2001 STMT CDW Computer Centers \$77.67 should be removed, because Taxpayer returned the item and credit was given on Taxpayer's credit card statement for the item.

FINDING

For the reasons stated above, Taxpayer's protest is sustained and denied based upon the individual comments.

II. Sales Tax—Items purchased for resale

DISCUSSION

IC 6-2.5-5-8(b) provides:

Transactions involving tangible personal property... are exempt from 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 provided the Department with copies of invoices indicating the purchased items. Taxpayer submitted a file folder marked "Section 2" that lists the items Taxpayer requests be removed from the assessment because the items purchased for resale. Having read the list and inspected the invoices, the Department removes these items from the assessment.

On page 8 of the Consulting audit summary: 12/05/2000 Crucial \$1252.74 was purchased by Taxpayer for resale. Taxpayer collected sales tax on the purchase by customer.

On page 8 of the Consulting audit summary: 12/18/2000 Crucial \$208.79 was purchased by Taxpayer for resale. Taxpayer collected sales tax on the purchase by customer.

On page 9 of the Consulting audit summary: 08/08/2000 was purchased by Taxpayer for resale. Taxpayer collected sales tax on the purchase by customer. The price was discounted because the unit was damaged.

On page 11 of the Consulting audit summary: 08/18/2000 Progressive Distribution Partners [amount to be confirmed by Audit] was purchased by Taxpayer for resale. Taxpayer did charge the customer sales tax on the purchase. Audit is to confirm the amount.

On page 12 of the Consulting audit summary: 03/10/2000 V Tech Data \$252.19 was purchased by Taxpayer for resale. Taxpayer collected sales tax from the customer.

On page 13 of the Consulting audit summary: 06/28/2000 V Tech Data \$5,749.44 was purchased by Taxpayer for resale. Sales tax was collected from the customers.

On page 13 of the Consulting audit report summary: 06/29/2000 V Tech Data \$280.44 and 06/30/2000 V Tech Data \$280.44

were purchased by Taxpayer for resale. Sales tax was collected from the customer.

On page 14 of the Consulting audit report summary: 11/22/2000 We Buy It \$720 was purchased by Taxpayer for resale. Sales tax was collected from the customer.

On page 18 of the Consulting audit report summary: 1/26/2001 Ingram Micro \$995.00 was purchased by Taxpayer for resale. Sales tax was collected from the customer.

Of note, Taxpayer included other invoices and statements within the file folder marked "Section 2" that have discrepancies that do not relate to the purchased for resale argument. These discrepancies were included in the previous discussion section.

The entry on page 11 of the Consulting audit summary: 08/18/2000 136280 Progressive Distribution Partners \$41,096.50 needs to be investigated and corrected. The invoice from the distributor lists 54 computers at \$964.25 each. That totals to \$52,069.50. Taxpayer provided documentation that Taxpayer resold 26 computers. That multiplies to \$25,070.50. Taxpayer subtracted the \$25,070.50 from \$41,096.50 to arrive at \$16,025.50, as entered on the audit summary. Taxpayer seeks to have the new assessment be \$41,096.50. Taxpayer is entitled to a credit on the assessment for the 26 computers that were resold. However, audit has to confirm from what amount the Taxpayer should subtract the \$25,070.50.

The entry on page 18 of the Consulting audit summary: 05/02/2001 11193 General Commercial Corporation \$61.25 should remain on the assessment. Taxpayer states that the items were for an individual and were shipped to the company address. Taxpayer submitted a copy of the invoice with the individual's name listed—prompting suspicion as to why Taxpayer has this copy of the individual's invoice. It is likely the Taxpayer paid for the items for use in marketing and advertising.

The three SHC*Smarthome entries on page 20 of the Consulting audit summary: 05/23/2001 STMT \$959.40; 05/24/2001 STMT \$591.20, and 05/24/2001 STMT \$1,551.89 should remain on the assessment. Taxpayer submitted documentation to demonstrate that these amounts were for items returned and credited. However, the amounts listed in the audit summary do not reconcile with the credit invoices submitted by Taxpayer.

FINDING

For the reasons stated above, the Department sustains the Taxpayer's protest.

III. Sales Tax—Resale to Tax-exempt purchasers

DISCUSSION

IC 6-2.5-8-8 states that a purchaser who presents a sale tax exemption certificate to a merchant is exempt from the imposition of sales tax. IC 6-2.5-3-7(b) states that a merchant is not required to produce evidence that an acquisition is exempt from the sales tax, when a purchaser presents a sale tax exemption certificate.

On page 11 of the Consulting audit summary: 01/12/2000 7594QWWH66H Prep Software \$46.00 was purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate.

On page 12 of the Consulting audit summary: 07/31/2000 00073115484289 STS Web Shop \$297.00 was purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate.

On page 17 of the Consulting audit summary: 12/13/2001 W1009538 Central Computers \$149.99 was purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate.

On page 24 of the Consulting audit summary: 02/08/2002 77 Central Computers \$279.98 was purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate.

On page 25 of the Consulting audit summary entries: 10/16/2002 and 10/18/2002 ICG Computers, Inc, each listed as \$145.00, were purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate. Likewise, on page 30: 12/11/2002 1701 \$145.00.

On page 10 of the Consulting audit summary: 01/17/2000 Ingram Micro \$10,635.00 was purchased by Taxpayer for resale. Taxpayer sold the items to a tax-exempt organization, and was presented with a tax-exempt certificate. The organization was unable to pay the bill, Taxpayer donated the equipment to the organization. This became a donation. Use tax is due on the \$10,635.

On page 11 of the Consulting audit summary: 07/27/2000 Nationwide Computer \$5,725.00 was purchased by Taxpayer for resale and sold to an tax-exempt customer.

On page 12 of the Consulting audit summary: 07/31/2000 STS Webshop \$297 was purchased by Taxpayer for resale. Taxpayer sold these items to tax-exempt organizations. No tax is due.

On page 13 of the Consulting audit summary: 04/10/2000 V Tech Data \$1,168.00 was purchased for resale and sold to a tax-exempt customer.

On page 13 of the Consulting audit summary: 06/28/2000 V Tech Data \$348.12 was purchased by Taxpayer for resale and sold to a tax-exempt customer.

On page 13 of the Consulting audit summary: 06/28/2000 V Tech Data \$1,720.86 was purchased by Taxpayer for resale and sold to a tax-exempt customer.

On page 3 of the Consulting audit report summary, Taxpayer was assessed use tax on the purchase of books that were given to the students as part of the class fee. Taxpayer stated that 90% of its business is to tax-exempt organizations, most of which are governmental vocational training programs. Taxpayer submitted invoices and tax-exempt certificate to substantiate that the books

were transferred to students enrolled in vocational training programs paid for by tax-exempt governmental agencies. Use tax is due on the 10% that were not transferred to students enrolled in vocational training programs paid by the agencies.

FINDING

For the reasons stated above, Taxpayer's protest is sustained or denied based upon the individual comments.

DEPARTMENT OF STATE REVENUE

0420040017P.LOF

LETTER OF FINDINGS NUMBER: 04-0017P

Sales and Use Tax for 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of 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(a)(3); IC 6-8.1-10-2.1(b); 45 IAC 15-11-2(b) and (c).

Taxpayer protests the imposition of a 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer protested the penalties assessed on sales tax liabilities issued in 2002. Taxpayer had taken a credit on monthly returns for the sales tax on bad debts. The Department determined Taxpayer was not entitled to the credit and issued assessments for the tax due. Taxpayer paid the tax liability but protested the penalty.

I. Tax Administration—Penalty

DISCUSSION

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.

Under 45 IAC 15-11-2(b), Taxpayer incurred a deficiency which the Department determined was due to negligence subject to a penalty under IC 6-8.1-10-2.1(a). However, Taxpayer supplied satisfactory evidence in its protest letter to establish reasonable cause to rebut the assessment of penalties.

FINDING

For the reasons stated above, the Department sustains Taxpayer's protest; no penalties are due.

DEPARTMENT OF STATE REVENUE

04-20040154.LOF

LETTER OF FINDINGS: 04-0154

**Sales and Use Tax
or Tax 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 the document will provide the general public with information about the Department's official position

concerning a specific issue.

ISSUES

I. Sales and Use Tax—Advertising

Authority: Ind. Code § 6-2.5-4-10; Information Bulletin # 59.

Taxpayer protests the imposition of sales tax with respect to its provision of advertising space.

II. Sales and Use Tax—Imposition

Authority: Ind. Code § 6-2.5-2-1; Ind. Code § 6-2.5-3-7; Ind. Code § 6-2.5-3-8.

Taxpayer protests the imposition of sales tax with respect to transactions where the purchaser self-assesses use tax.

III. Sales and Use Tax—Inclusion of sales

Authority: Ind. Code § 6-8.1-5-1.

Taxpayer protests the imposition of sales tax with respect to amounts that Taxpayer claims were erroneously assessed twice, along with the amount of sales that the Department claimed Taxpayer underreported.

IV. Tax Administration: Negligence Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the assessment of a negligence penalty.

STATEMENT OF FACTS

Taxpayer is a company engaged in the rental of advertising space. During the years at question, Taxpayer sold rental space at various Indiana locations. Taxpayer did not charge sales tax on its rentals during the years in question with respect to several advertisers. The Department assessed sales tax on these rentals, along with another rental upon which Taxpayer claims the purchaser paid use tax. Taxpayer also claims that the auditor effectively double-counted certain transactions, and erroneously assessed certain underreported sales. Taxpayer also protests the negligence penalty imposed by the Department.

I. Sales and Use Tax—Advertising

DISCUSSION

First, Taxpayer argues that its provision of advertising space constituted a service, rather than a rental of space. The crucial difference is that the rental is taxable under Ind. Code § 6-2.5-4-10, while the provision of a service is not taxable.

Here the arrangement can be described as follows: an advertiser provides a copy of its advertisement to Taxpayer. Taxpayer, upon review of the advertisement for content and suitability, installs the advertisement in its display cases. Cleaning and maintenance of the display cases may be done by Taxpayer, though Taxpayer apparently contracts for the performance of that work.

According to Information Bulletin # 59,

The key element in determining whether the transaction is a rental or a service is who controls the property. If the person paying for the use of the advertising space controls the space, the transaction is a rental of the space and is taxable. If the person using the property does not control the property then the transaction is a service.

The person paying for the use of the space has control when that person can determine the location of the advertising space or has the right to direct how the advertising space will be used. The person using the space must have exclusive use of the space. Other factors indicating control are whether the customer provides upkeep and maintenance of the space, and whether the customer pays for the posting of the advertising material.

Taxpayer's arrangement leads the Department to conclude that the sales in question are those of services rather than rentals of tangible personal property, and accordingly not subject to tax.

FINDING

Taxpayer's protest is sustained.

II. Sales and Use Tax—Imposition

DISCUSSION

Second, Taxpayer argues that it should not be assessed sales tax with respect to one of its clients. Taxpayer notes that the client pays use tax with respect to the client's purchase of advertising from Taxpayer, and has provided a statement from the client that the client pays use tax with respect to the advertising.

Under Ind. Code § 6-2.5-2-1(b), a person purchasing tangible personal property in a retail transaction shall pay the sales tax to the retail merchant. To avoid collection duties as assigned under the statute, a retail merchant must provide evidence of exemption, either by producing a Department exemption certificate from the purchaser or other evidence of the purchaser's exemption. Ind. Code § 6-2.5-3-7(b). The offsetting credit regime under Ind. Code § 6-2.5-3-8 provides a credit for a purchaser for taxes paid to the merchant, not the other way around. Accordingly, Taxpayer, who is required to collect sales tax in this situation, is denied.

FINDING

Taxpayer's protest is denied.

III. Sales and Use Tax—Inclusion of sales

DISCUSSION

Third, Taxpayer protests the assessment with respect to three items that Taxpayer maintains were erroneously included in the

assessment for the first quarter of 2000. Taxpayer argues that its records of the sales in question kept a record of three supplemental sales journals for various locations in Indiana. However, Taxpayer argues, the Department added the amounts of the three items to the amounts that Taxpayer originally reported and which had already included the items in controversy. After review, Taxpayer has provided sufficient information to conclude that the amounts in controversy were added in error.

Fourth, Taxpayer protests the assessment of sales tax with respect to underreported sales for 2002. In particular, Taxpayer protests the difference between its records and Department's records. Further, Taxpayer argues that one billing represented periods in 2003, outside the scope of the audit. Here, Taxpayer has not provided sufficient information to conclude that the Department's assessment-presumably correct, per Ind. Code § 6-8.1-5-1(a)- was incorrect.

FINDING

Taxpayer's protest is sustained with respect to three items that it maintains were included twice for the first quarter of 2000. Taxpayer is denied with respect to its 2002 underreporting.

IV. Tax Administration: Negligence Penalty

The Department may impose a ten percent (10%) negligence penalty. Ind. Code § 6-8.1-10-2.1 and 45 IAC 15-11-2. Taxpayer's failure to timely file income tax returns, generally, will result in penalty assessment. Ind. Code § 6-8.1-10-2.1(a)(1). The Department, however, may waive this penalty if the taxpayer can establish that its failure to file "was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). A taxpayer may demonstrate reasonable cause by showing "that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...." *Id.* Taxpayer has not made the necessary showing in this case.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20040176.LOF

LETTER OF FINDINGS NUMBER: 04-0176

Sales/Use Tax

Periods of 2000 Through 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. Sales/Use Tax: Rental Invoices

Authority: IC 6-2.5-2-1; IC 6-2.5-9-4; IC 6-8.1-5-1(b); 45 IAC 15-11-2.

The taxpayer protests the proposed assessment of taxable sales on rental invoices between closely held companies.

STATEMENT OF FACTS

The taxpayer's main business is the renting of construction equipment, such as dump trucks, fork lifts, loaders, etc. The taxpayer does not provide operators for the construction equipment leased to the taxpayer's customers. More facts will be provided as needed below.

I. Sales/Use Tax: Rental Invoices

DISCUSSION

As noted, the taxpayer leases construction equipment. Regarding the taxpayer's business, the Auditor noted, "[m]ost of the equipment is leased to a 'sister' corporation, [Company X]." The Auditor found that:

[T]he taxpayer computed their sales tax liability on computer generated invoices to [Company X, the 'sister' company] by taking the total amount billed and dividing by 1.05 to arrive at their taxable sales.

The Auditor further stated that an adjustment was made "to increase the taxpayer's taxable sales ... based on the fact that the taxpayer is not allowed to consider sales tax to be included in the sales figure when the tax is not separately stated on the sales invoice."

The relevant statutes at issue are IC 6-2.5-2-1 and IC 6-2.5-9-4. The former states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The 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.

And the latter states in pertinent part:

(a) Except as provided in IC 6-2.5-7, a person who:

- (1) displays an advertised price, marked price, or publicly stated price that includes the state gross retail or use taxes;
- (2) offers to assume or absorb part of a customer's state gross retail or use tax on a sale; or
- (3) offers to refund part of a customer's state gross retail or use tax as a part of a sale; commits a Class B infraction.

The two statutes dovetail together: IC 6-2.5-2-1 requires the tax to be "a separate added amount" and IC 6-2.5-9-4 makes it a Class B infraction to display "an advertised price, marked price, or publicly stated price that includes the state gross retail or use taxes...."

The taxpayer argues that it and Company X "are operated under common ownership, share administrative office space and have enjoyed a working relationship since [the taxpayer's] inception." The taxpayer argues:

The Companies had an oral agreement that sales tax was part of the rental price as quoted for each piece of equipment. We acknowledge that the invoices did not reflect that the sales tax was included in the gross price.

In addition, the taxpayer also intimated that it did not run afoul of the "added amount" language of IC 6-2.5-2-1(b). However, the language of IC 6-2.5-2-1(b) is clear, particularly so when read in conjunction with IC 6-2.5-9-4. The tax law does not allow for an "oral contract" to circumvent the statutory requirements outlined above. (It should also be noted a negligence penalty was imposed, but the taxpayer did not develop any arguments regarding the penalty and is thus denied on the penalty too—See IC 6-8.1-5-1(b) regarding the taxpayer's burden of proof, and 45 IAC 15-11-2 regarding the penalty).

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20040227.SLOF

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 04-0227

Sales/Use Tax

For the Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax-Vehicles

Authority: Ind. Code § 6-2.5-2-1; Ind. Code § 6-2.5-3-6; Ind. Code § 6-2.5-3-7; Ind. Code § 6-2.5-4-1; Ind. Code § 6-2.5-5-15.

Taxpayer protests the Department's assessment of sales tax with respect to the sale of trailers by Taxpayer, which Taxpayer claims were titled outside Indiana.

II. Sales and Use Tax-Services

Authority: Ind. Code § 6-8.1-5-4.

Taxpayer protests the imposition of sales tax with respect to charges that Taxpayer maintains were for services.

III. Sales and Use Tax-Imposition

Authority: Ind. Code § 6-2.5-3-2; Ind. Code § 6-2.5-3-5.

Taxpayer protests the imposition of use tax with respect to items that were purchased outside Indiana or constituted overhead expenses.

STATEMENT OF FACTS

Taxpayer is a corporation engaged in the sale of cargo trailers. Taxpayer purchases the trailers from another company, and then in turn sells them to purchasers, both in and out of Indiana according to Taxpayer.

During late 2002, Taxpayer's office was burglarized. After the burglary, Taxpayer reported a number of items stolen during the burglary. Later that same year, Taxpayer was audited by the Department. In the early part of 2003, after the Department notified Taxpayer of the audit, Taxpayer amended the original police report to include many other items, including Taxpayer's business records.

During the audit, the Department noted a difference between Taxpayer's sales reported for income tax purposes and sales reported for sales tax purposes. Taxpayer has protested this assessment, arguing that the sales were shipped to out-of-state purchasers or that the sales represented fees received for services performed by Taxpayer. Taxpayer has further protested the imposition of use tax with respect to several items that Taxpayer maintains were purchased outside Indiana or represented overhead expenses.

I. Sales and Use Tax-Vehicles

DISCUSSION

Taxpayer argues that the sales in controversy were to out of state purchasers, and therefore exempt from sales tax. Taxpayer

maintains, however, that the records were stolen in a burglary in late 2002. Taxpayer provided a list of sales indicating the various destinations of the trailers in controversy.

Under Ind. Code § 6-2.5-4-1, the sale of tangible personal property in the regular course of a person's regularly conducted trade or business is subject to sales tax. The sale of trailers constituted Taxpayer's regularly conducted trade or business, and accordingly Taxpayer had a responsibility to collect sales and use tax with respect to the sale of trailers. Ind. Code § 6-2.5-2-1(b); Ind. Code § 6-2.5-3-6(b).

Further, under Ind. Code § 6-2.5-3-7, property purchased in Indiana is presumed to be purchased for use in Indiana unless the seller has either been provided an exemption certificate by the purchaser or the seller or purchaser can otherwise establish that the property purchased was not used in Indiana, or was used for an exempt purpose.

However, Ind. Code § 6-2.5-5-15 stated that, for the years in question, trailers were exempt from sales tax if the purchaser immediately transports the trailer outside Indiana, titles or registers the vehicle in another state and does not title or register the trailer in Indiana.

Taxpayer has two avenues for establishing that Taxpayer is not liable for the tax in question. The first is to demonstrate that Taxpayer received an exemption certificate from the purchaser at the time of the purchase. Ind. Code § 6-2.5-3-7(b). Taxpayer has not done this.

In the alternative, Taxpayer can establish that the property was transported for use outside Indiana. To do this, Taxpayer would need to establish that the property was titled outside Indiana. Under the laws of Indiana and many other states, trailers are required to be registered with a relevant state agency. Taxpayer has provided sufficient documentation to conclude that the sales that Taxpayer indicated were shipped out-of-state were in fact shipped out-of-state.

FINDING

Taxpayer's protest is sustained.

II. Sales and Use Tax-Services

DISCUSSION

Taxpayer further argues that a portion of the sales in controversy actually represented service fees rather than the sale of tangible personal property, but lost his records in the 2002 burglary.

While Taxpayer does make a correct statement of law if the charges in question were separately stated on the taxpayer's records, the issue becomes Taxpayer's records. Under Ind. Code § 6-8.1-5-4, a taxpayer is required to maintain books and records necessary to permit Department review of a taxpayer's liability by reference to those books and records. Otherwise, the taxpayer becomes subject to liability based on the best information available to the Department. Without the records to substantiate this claim, the best information available in this case is Taxpayer's gross sales per his federal income tax return. Accordingly, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

III. Sales and Use Tax-Imposition

DISCUSSION

Taxpayer protests the imposition of use tax with respect to several items. In particular, Taxpayer argues that the items constituted overhead expenses or were purchased outside of Indiana (both representations were contained in Taxpayer's protest), and accordingly is not subject to use tax on these items.

Indiana, like other states with sales taxes, imposes a use tax to complement its sales tax. In Indiana, a taxpayer is generally responsible for use tax with respect to all tangible personal property purchased in retail transactions, along with automobiles, watercraft and aircraft regardless of whether those items are purchased at retail, if the property in question is used in Indiana. Ind. Code § 6-2.5-3-2. If a taxpayer has paid sales or use tax to another state, the taxpayer is eligible for a credit against the use tax. Ind. Code § 6-2.5-3-5.

Several items are in question here. Taxpayer has not provided sufficient documentation, and accordingly is denied.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120040318.SLOF

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 04-0318

Adjusted Gross Income Tax for 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

Adjusted Gross Income Tax—Imposition

Authority: IC 6-8.1-5-1(b); IC 6-3-2-1(a); IC 6-3-1-12; State Election Board v. Evan Bayh, 521 N.E.2d 1212 (Ind. 1988); NRS 483.245; NRS 483.141; NRS 483.230; NRS 483.240.

The taxpayer protests the imposition of the adjusted gross income tax.

STATEMENT OF FACTS

Taxpayer moved to Nevada in April 2003. He filed an Part-Year Non-Resident Indiana Adjusted Gross Income Tax return for 2003 (IT-40PNR). On the form, he sought a refund of excess income tax that had been withheld and paid to the State of Indiana. The Department denied Taxpayer's request for refund and issued an assessment for underpayment of income tax on the basis that Taxpayer had been a full-year resident of Indiana in 2003 despite having moved to Nevada in April 2003. Taxpayer protested the refund denial and assessment; a hearing was scheduled.

Taxpayer submitted documentation to support his request for refund and to rebut the income tax assessment. Taxpayer requested that the decision be based upon review of the submitted documentation in lieu of a hearing. A letter of findings was issued denying the refund and upholding the assessment. Taxpayer filed a request for rehearing. Taxpayer submitted additional documentation and requested that the decision in this supplemental letter of findings be based upon review of the additional submitted documentation in lieu of a rehearing.

Adjusted Gross Income Tax—Imposition

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

Indiana imposes an adjusted gross income tax pursuant to the 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 denied Taxpayer's request for refund of the Indiana adjusted gross income taxes remitted to Indiana for the period May 2003 through December 2003. Taxpayer asserts that he earned that income as a non-resident of Indiana and is not subject to the imposition of the tax. The issue to be determined is whether Taxpayer was an Indiana resident for purposes of Indiana adjusted gross income taxation for all of 2003. Because Nevada does not have an adjusted gross income tax, no issue exists concerning the imposition of double taxation.

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, Taxpayer would be considered an Indiana resident and subject to tax on income earned during the period when he was domiciled in Indiana.

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 the case, Mr. Bayh desired to run for governor of Indiana. Pursuant to public discussion concerning whether he met the residency requirements for governor, Mr. Bayh sought a declaratory judgment. 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. The court affirmed 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." *Id.* at 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 the person has successfully established a new domicile is a question of fact to be determined by the trier of fact. *Id.* 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 retained his Indiana domicile even though he had lived outside the state for several years.

Taxpayer accepted a transfer to a job in Nevada in April 2003. Taxpayer argues that this move established his domicile in Nevada in April 2003. However, Taxpayer did not move his car to Nevada, obtain a Nevada driver's license, or register to vote in Nevada until 2004. In September 2003—four months after Taxpayer moved to Nevada—he took the time and trouble to renew the expired Indiana license plate for his car. These acts on the part of the taxpayer indicate that he did not establish his domicile in Nevada until 2004.

Taxpayer argues that waiting until 2004 to move his car, obtain a Nevada driver's license, and registering to vote were acts of oversight. Taxpayer asks the Department to consider his state of mind. Nevada has strict vehicle registration requirements and even stricter driver's license requirements. Nevada law requires a resident to obtain a Nevada driver's license within 30 days of becoming

a resident. NRS 483.245 (1995). That means Taxpayer was required to have obtained a Nevada driver's license by May 2003 to have established residency and to have legally driven within Nevada. *See* NRS 483.141 (1997), defining "resident". Taxpayer stated that he drove a rental car until his car was shipped to him in January 2004. Taxpayer was provided a rental car by the company he worked for and that the car was made available to him upon his arrival in Nevada in April 2003. Nevada prohibits someone from driving within the state unless he has a valid driver's license. *See* NRS 483.230 (1969) and NRS 483.240 (1969). Taxpayer was legally able to drive within Nevada because he held a valid Indiana driver's license obtained as a domiciled resident of Indiana.

Taxpayer has not meet his burden of proving that he changed his domicile from Indiana to Nevada during the 2003 tax period.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120040388.LOF

LETTER OF FINDINGS NUMBER: 04-0388 Individual Income Tax for 2000 and 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Income Tax—Overstated Income

Authority: IC 6-8.1-5-1(b).

Taxpayer protests the assessment of income tax due, asserting that the income was overstated by the Department.

STATEMENT OF FACTS

Taxpayer is the majority shareholder of a for-profit Indiana S-corporation that sells and installs manufactured housing. The Department audited the corporation and assessed sales tax on the sale of an asset deemed to not be a casual sale. The Department also conducted an income tax audit. Because the corporation is a pass-through entity, the assessments were levied against the shareholders. Taxpayer filed a protest, asserting that the income was overstated due to the sale of the fixed asset. A hearing was held.

Income Tax—Overstated Income

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). The audit report revealed that the corporation had elected to report its revenues and expenses on an accrual basis. Because income is reported in the year it is earned, the audit determined that Taxpayer understated the pass-through receipts. As well, the audit revealed that the corporation had understated the cost-of-goods sold. This adjusted Taxpayer's income. The audit also revealed that the corporation had overstated the interest expense. This adjusted Taxpayer's pass-through income. Taxpayer is protesting the overstatement of income due to the sale of a fixed asset. Nothing in the audit addressed such an adjustment. The Department find no basis for a protest.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120040389.LOF

LETTER OF FINDINGS NUMBER: 04-0389 Individual Income Tax for 2000 and 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Income Tax—Overstated Income

Authority: IC 6-8.1-5-1(b).

Taxpayer protests the assessment of income tax due, asserting that the income was overstated by the Department.

STATEMENT OF FACTS

Taxpayer is the minority shareholder of a for-profit Indiana S-corporation that sells and installs manufactured housing. The Department audited the corporation and assessed sales tax on the sale of an asset deemed to not be a casual sale. The Department also conducted an income tax audit. Because the corporation is a pass-through entity, the assessments were levied against the shareholders. Taxpayer filed a protest, asserting that the income was overstated due to the sale of the fixed asset. A hearing was held.

Income Tax—Overstated Income**DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). The audit report revealed that the corporation had elected to report its revenues and expenses on an accrual basis. Because income is reported in the year it is earned, the audit determined that Taxpayer understated the pass-through receipts. As well, the audit revealed that the corporation had understated the cost-of-goods sold. This adjusted Taxpayer's income. The audit also revealed that the corporation had overstated the interest expense. This adjusted Taxpayer's pass-through income. Taxpayer is protesting the overstatement of income due to the sale of a fixed asset. Nothing in the audit addressed such an adjustment. The Department find no basis for a protest.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040390.LOF

LETTER OF FINDINGS NUMBER: 04-0390**Sales Tax for Period Ending 11/30/2002**

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**Sales Tax—Casual sale; isolated sale**

Authority: IC 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-6-1; 45 IAC 2.2-1-1(d).

Taxpayer protests the assessment of sales tax on an asset it sold in the course of its business.

STATEMENT OF FACTS

Taxpayer is a for-profit Indiana S-corporation that sells and installs manufactured housing. In 1999 Taxpayer purchased a manufactured home which it used as an office. Taxpayer later sold the asset. The Department conducted an audit and found that although Taxpayer primarily operated as a lump sum contractor, it did collect but did not remit the sales tax due on the sale of this manufactured home. The Department assessed the sales tax due that should have been remitted. Taxpayer filed a protest, stating that no sales tax was due on the sale of the asset.

Sales Tax—Casual sale; isolated sale**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. The retail merchant is required to collect the sales tax as agent for the state. *Id.* IC 6-2.5-6-1 requires a merchant to remit to the Department the sales tax it has collected on behalf of the State.

Taxpayer asserts that when it sold the manufactured house that had been used as an office, it sold an asset and for this reason sales tax was not due on the sale. 45 IAC 2.2-1-1(d) states:

Casual Sales. The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipts from casual sales of motor vehicles and sales of rental property. A casual sale is an isolated or occasional sale by the owner of tangible personal property purchased or otherwise acquired for his use or consumption, where he is not regularly engaged in the business of making such sales.

Taxpayer is in the business of selling manufactured housing. The sale of the house that previously served as an office was not a casual or isolated sale because the sale of manufacturing housing is Taxpayer's business. For this reason, sales tax was due on the sale to the customer and Taxpayer was required by Indiana law to submit the sales tax.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220040427.LOF

LETTER OF FINDINGS NUMBER: 04-0427

Corporate Income Tax
For the Years 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. Gross Income Tax—Indiana sales

Authority: IC 6-8.1-5-1(b); IC 6-2.1-2-2(a)(2); IC 6-7-1 *et seq.*; 45 IAC 1.1-3-3(c); Indiana Dep't of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994).

Taxpayer protests the imposition of Gross Income Tax, arguing it did not solicit sales from within Indiana.

II. Adjusted Gross Income Tax—Royalty payments

Authority: IC 6-3-2-2(l) and (m); Gregory v. Helvering, 293 U.S. 465 (1935); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Horn v. Commissioner, 968 F.2d 1229 (D.C. Cir. 1992); Lee v. Commissioner, 155 F.2d 584 (2d Cir. 1998).

Taxpayer protests the Department requiring the filing of a unitary return of Taxpayer and an affiliated royalty company.

III. Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(b) and (c).

Taxpayer requests an abatement of penalties

STATEMENT OF FACTS

Taxpayer, a manufacturer of cigarettes, is domiciled in North Carolina. Taxpayer is a multistate corporation with sales to Indiana. All products sold in Indiana are shipped from warehouses located outside Indiana. Taxpayer's only sales into Indiana are sales to direct account distributors. The distributors are wholesalers licensed by the State of Indiana to place a cigarette tax stamp on the cigarette pack. Because the cigarette tax stamp has to be placed on the packs, cigarettes coming into Indiana may be sold only to authorized distributors. These direct account wholesalers then resell the cigarettes to Indiana retailers.

Taxpayer paid royalties of 4.5% of its Indiana revenue sales to Royalty, a subsidiary domiciled in North Carolina. Taxpayer deducted the royalty payments as an expense on its Indiana return. Royalty is domiciled in North Carolina.

Taxpayer filed amended income tax returns for 1997, 1998, and 1999. The Department denied the refunds claimed by Taxpayer and conducted an audit for 2000 and 2001. Taxpayer was issued an assessment, which included imposition of gross income tax and adjusted gross income tax. The assessment of adjusted gross income tax was caused by the Department's requiring a unitary return to be filed by both Taxpayer and Royalty to fairly reflect the Indiana source income.

Taxpayer protested the denial of refund and the imposition of an assessment. A hearing was held. The determination of the assessment issues is binding upon the refund claims.

I. Gross Income Tax—Indiana sales

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).

Under IC 6-2.1-2-2(a)(2), a nonresident taxpayer was subject to gross income tax only on the taxable gross income derived from activities, businesses, or any other sources within Indiana. Indiana Courts have held that gross income tax may not be imposed upon receipts received by a taxpayer from the sale of tangible personal property if the activities giving rise to the receipts are interstate in character and the in-state activities are *de minimis*. See, Indiana Dep't of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994). Where the Indiana activities are merely incidental to a corporation's total operation, they are insufficient for the Indiana Department of State Revenue to seize upon in attempting to apply IC 6-2.1-2-2(a)(2). *Id.* at 271.

45 IAC 1.1-3-3(c) states that gross income derived from the sale of tangible personal property in interstate commerce is not subject to the gross income tax if the sale is not completed in Indiana. 45 IAC 1.1-3-3(c)(5) states that a sale to an Indiana buyer by a nonresident with an in-state business situs or activities but the situs or activities are not significantly associated with the sale because it was initiated, negotiated, and serviced by out-of-state personnel and the goods are shipped from out of state is not Indiana source income. However, Taxpayer had in-state personnel who initiated, negotiated, and serviced the retail stores in conjunction with the sales to the distributors.

For the years in question, Taxpayer had at least fifty customer service representatives (CSR) whose responsibilities included visiting retail locations to promote the products and maintain quality standards. The duties of the CSRs included monitoring contracts for product placements within the retail stores; handling outdated and damaged products; assembling and placing promotions and

displays; monitoring competitor activity; and completing requests for information, such as surveys. Taxpayer states that the CSRs did not solicit sales, but the representatives were servicing the retail stores. According to the audit report, the CSRs negotiated and contracted for desirable product placement within the retail locations. The CSRs also evaluated the store's inventory and authorized returns of product to the distributor for credit or replacement. While the retail stores were required under IC 6-7-1 *et seq.* to purchase the cigarettes from a distributor, it was Taxpayer who monitored and serviced the retail locations to encourage and promote sales. Without a demand for product, the orders would not be placed by the retail store to the distributor. It is significant to note that Taxpayer authorized the return of damaged and outdated product to the distributor.

Taxpayer seeks to isolate the sale of product to the distributor alone. And while the orders were sent to out-of-state locations and were shipped from out-of-state warehouses, Taxpayer was actively working with both the distributor and the retailers to solicit, promote, and service the Indiana sales. When taken as a whole, the activities of Taxpayer's in-state employees show that the sales were made within Indiana.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

II. Adjusted Gross Income Tax—Royalty payments

DISCUSSION

Taxpayer reported large deductions on its federal return for royalty payments to an affiliated company, Royalty. Royalty is a wholly-owned subsidiary of Taxpayer and its sole business is the ownership and administration of trade names, trademarks, service marks, and related trade marks formally owned by Taxpayer in its cigarette business. The auditor for the Department stated in the audit report that the use of the intellectual property by Taxpayer is integral to its operations. For this reason, the activities of Royalty is unitary with Taxpayer.

IC 6-3-2-2(l) states:

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

In addition, IC 6-3-2-2(m) states:

In the case of two or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the Department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

Because Royalty is a wholly owned subsidiary of Taxpayer, common control is not at issue.

The issue remains as to whether Taxpayer and Royalty in fact constituted a unitary business. It needs to be stated that Taxpayer framed its protest as a disallowed deduction of royalties paid by Taxpayer to Royalty. While the functional effect may be a disallowance of the deduction, the audit technically did not disallow the deduction, but instead had Taxpayer and Royalty file a unitary return.

Under the agreement between Taxpayer and Royalty, Taxpayer paid Royalty a royalty of 4.5% of Taxpayer's sales. Taxpayer sold cigarettes in Indiana. The value of the trade names, trademarks, and other intellectual properties is inextricably connected with the quality of the cigarette products manufactured by Taxpayer. The effect of the royalty payments was to shift 4.5% of the sales income from Taxpayer to Royalty. The filing of a unitary return better reflects the intercompany transaction.

The "sham transaction" doctrine is well established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). The United States Supreme Court held in the case 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; "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. Courts subsequently have 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 (2d Cir. 1949), *cert denied*, 338 U.S. 955 (1950). Transactions 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, 968 F.2d 1229, 1236-37 (D.C. Cir. 1992). The question of whether or not a transaction is a sham, for purposes of the doctrine, is primarily a factual one. Lee v. Commissioner, 155 F.2d 584, 586 (2d Cir. 1998). The taxpayer has the burden of

demonstrating that the subject transaction was entered into for a legitimate business purpose. IC 6-8.1-5-1(b).

Taxpayer stated at the hearing that the purpose of establishing Royalty was to be able to exploit the intellectual properties. However, in light of the fact that the value of the intellectual properties is based on the quality of the products sold by Taxpayer, the royalty payments have the effect of shifting income from Taxpayer to Royalty. While this had no effect on the federal tax returns, it does effect Taxpayer's Indiana return because Taxpayer has claimed a deduction for a transaction that shifted 4.5% of Taxpayer's revenues generated within the State of Indiana to an out-of-state affiliated entity. The value of the intellectual properties held by Royalty and the revenues received by Royalty were generated by the sale of Taxpayer's product within Indiana. This explains why a unitary return is appropriate to fairly reflect the transactions. Further, even if a unitary return is not permissible for whatever reason, the transaction is still a sham, and thus the deduction for expenses from Taxpayer to Royalty should be disallowed.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

III. Penalty

DISCUSSION

Taxpayer asks the Department to abate the 10% negligence penalties because the position of Taxpayer and its Parent for the audit years in question were based upon reasonable and proper interpretation of both state and federal law.

IC 6-8.1-10-2.1 requires that a 10 % penalty be imposed if the tax deficiency results from the taxpayer's negligence. 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Taxpayer has not shown it used the "ordinary business care and prudence" expected of an "ordinary reasonable taxpayer" that would warrant abatement of the negligence penalty.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120050015.LOF

LETTER OF FINDINGS NUMBER: 05-0015

Individual Income Tax

For the Years 1998 and 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Individual Income Tax—Validity of assessment

Authority: IC 6-8.1-5-1(a) and (b); IC 6-3-2-1(a); IC 6-3-4-1; IC 6-3-4-5.

Taxpayer protests the validity of the assessment of individual income tax by the State of Indiana.

STATEMENT OF FACTS

Taxpayer failed to file Indiana individual income tax returns for 1998 and 1999. The Department prepared returns for Taxpayer based on information obtained from the Internal Revenue Service and issued assessments for the tax due. Taxpayer protested asserting that the assessments were grossly in error and that no valid assessment was ever made. The Department wrote Taxpayer asking him to present any information to refute the assessments. Taxpayer submitted no additional documentation. The Department forwarded the protest to a hearing officer so that a hearing could be scheduled. Taxpayer did not respond to requests to schedule a hearing; a fixed date to respond by was stated. That date having passed, this letter of findings is written based upon the information contained within the file.

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Taxpayer was informed of this in correspondence replying to his protest.

IC 6-3-2-1(a) imposes an individual income tax upon the adjusted gross income of Indiana residents and on the portion of

adjusted gross income of nonresidents derived from Indiana sources. IC 6-3-4-1 requires Indiana residents to file an income tax return if they have adjusted gross income in excess of the modifications provided under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4). Taxpayer had adjustable gross income in excess of these modifications. IC 6-3-4-5 states that if a taxpayer is required to file an income tax return, he shall pay any tax due and is entitled to take as credit toward the tax due any payments made for the taxable year.

IC 6-8.1-5-1(a) states that if the Department reasonably believes that a person has not reported the proper amount of tax due, the Department is required by law to issue an assessment of the amount of the unpaid tax on the basis of the best information available to the Department. The Department received information from the Internal Revenue Services concerning Taxpayer's income for 1998 and 1999 and based upon this issued assessments. IC 6-8.1-5-1(b) states that the notice of assessment is prima facie evidence that the Department's claim for unpaid tax is valid; the burden of proving that the assessment is wrong rests with the person against whom the assessment is made. Taxpayer has been afforded opportunities to rebut the assessments and has not presented documentation or information sufficient to rebut the assessments.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220050019P.LOF

LETTER OF FINDINGS NUMBER: 05-0019P

Income Tax

For Tax Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Income—Overpayment Application

Authority: IC 6-3-4-4.1; IC 6-8.1-9-2

Taxpayer protests that the Department misapplied overpayment credits resulting in proposed assessments of income tax due.

II. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent (10%) negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an out-of-state business doing business in Indiana. The Indiana Department of Revenue ("Department") conducted an audit and issued proposed assessments for income tax, penalty and interest for 2001. Taxpayer protests the assessments. Further facts will be supplied as required.

I. Income—Overpayment Application

DISCUSSION

Taxpayer had an overpayment credit available on its 2001 return. Taxpayer asked that the full amount of the overpayment credit be carried forward to 2002. As the result of an audit, the Department determined that taxpayer had an outstanding withholding tax liability due to unfiled returns from 1999. Taxpayer subsequently filed the returns and the Department returned the overpayment credit to the 2001 corporate return and applied the overpayment to the 1999 deficiencies. The remaining portion of the overpayment was carried forward to 2002 as requested by taxpayer. As the result of another audit, the Department determined that taxpayer owed additional taxes for 2001. The Department issued a proposed assessment for the base liability along with penalty and interest.

Taxpayer protests that it should be allowed to take the overpayment which it had previously requested to have applied as a credit to 2002 and have it reapplied back to 2001, which would cover the underpayment. This is not the correct method. IC 6-3-4-4.1(d) states:

Every corporation subject to the adjusted gross income tax liability imposed by IC 6-3 shall be required to report and pay an estimated tax equal to twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year, less the credit allowed by IC 6-3-3-2 for the tax imposed on gross income. Such estimated payment shall be made at the same time and in conjunction with the reporting of gross income tax as provided in IC 6-2.1-5. The department shall prescribe the manner and forms for such reporting and payment.

Also of significance is IC 6-8.1-9-2, which states in relevant part:

(a) If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. The department may then apply

any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. If any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

Since taxpayer elected to have the 2001 overpayment applied to 2002 under IC 6-8.1-9-2(a), that credit became part of the 2002 estimated payments required by IC 6-3-4-4.1. Once the payment for 2002 was made, it was made. The Department is not a quasi-financial institution and the overpayment for 2001 was not a floating deposit in an "account" at such an institution. Once taxpayer elected to apply the overpayment to 2002, the application ended the availability of the credit. When the audit revealed the liabilities for 2001, the previous overpayment credit had already been applied to 2002 and no longer existed.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty and Interest

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).

IC 6-8.1-10-1(e) states that the Department may not waive interest. However, in discussions with taxpayer prior to the writing of this Letter of Findings, the Department determined that it had miscalculated the interest. The Department agreed to recalculate the interest, which will result in a lesser amount of interest. Under IC 6-8.1-10-1(e), the interest may not be waived.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220050031.LOF

LETTER OF FINDINGS NUMBER: 05-0031

Corporate Income Tax

For the Years 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. Gross Income Tax—Royalty Income from trade names, trademarks, and other intellectual property

Authority: IC 6-8.1-5-1(b); IC 6-2.1-2-2; 45 IAC 1-1-51.

Taxpayer protests the imposition of Gross Income Tax on royalties receipts.

II. Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(b) and (c).

Taxpayer requests an abatement of penalties

STATEMENT OF FACTS

Taxpayer is a wholly-owned subsidiary of a manufacturer. Taxpayer is domiciled in North Carolina and its sole business is the ownership and administration of trade names, trademarks, service marks, and related trademarks formally owned by the parent in its business. Parent pays Taxpayer 4.5% of its sales revenues in exchange for Parent's use of the intellectual property.

Parent filed amended income tax returns for 1997, 1998, and 1999. The Department denied the refunds claimed by Parent and conducted an audit for 2000 and 2001 of Parent and Taxpayer. Taxpayer was issued a gross income tax assessment on the royalties paid by Parent on Indiana revenue sales.

Taxpayer protested the assessment. A hearing was held. The determination of the assessment issues is binding upon the refund claims.

I. Gross Income Tax—Royalty Income from trade names, trademarks, and other intellectual property**DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

Indiana imposed gross income tax on the taxable gross income of a taxpayer which is a resident or domiciliary of Indiana and on the taxable gross income from Indiana sources by a taxpayer who is not a resident or domiciliary of Indiana. IC 6-2.1-2-2.

Under the regulation governing the gross income tax, "taxable gross income" includes income that is derived from intangibles. 45 IAC 1-1-51. The term "intangibles" includes royalties. *Id.* In order for Indiana to impose the gross income tax on income derived from taxpayer's intangibles, the Department must determine that the income is derived from a "business situs" within the state. *Id.* The regulation states that a taxpayer has established a "business situs" within the state if the intangible or the income derived from the intangible forms an integral part of a business regularly conducted at a situs in Indiana. *Id.* Once the taxpayer has established a "business situs" within the state, and the intangible or the income derived from the intangible is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes. *Id.*

The income derived from Taxpayer's licensing of its intellectual property within the state is income derived from a "business situs" within Indiana and is properly subject to the state's gross income tax scheme. The intellectual property is localized within Indiana because the intellectual is integrally related to the products sold within Indiana. The income at issue is not derivative of taxpayer's out-of-state activity in developing, managing, and protecting the intellectual property; the value of this intellectual property lies in Taxpayer's ability to license the property for use within Indiana, to maintain rigorous control over the use of the property, and to derive the economic benefits attributable to the intangible property's Indiana business situs.

Taxpayer was paid royalties on the products sold within Indiana. It was the efforts of the company to promote products within Indiana that generated the royalties. The value of the intangibles is inextricably tied to the company's efforts. Taxpayer received royalties based upon the company's gross income received in Indiana. The amount of that gross income is directly attributable to the success in marketing and labeling within Indiana. Taxpayer's gross income is a measure of the company's success within Indiana.

Because the intangible intellectual property has acquired a business situs within Indiana and because the income at issue is connected with that business, either actually or constructively, the income is subject to Indiana gross income tax.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

II. Penalty**DISCUSSION**

Taxpayer asks the Department to abate the 10% negligence penalties because the position of Taxpayer and its Parent for the audit years in question were based upon reasonable and proper interpretation of both state and federal law.

IC 6-8.1-10-2.1 requires that a 10 % penalty be imposed if the tax deficiency results from the taxpayer's negligence. 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Taxpayer has not shown it used the "ordinary business care and prudence" expected of an "ordinary reasonable taxpayer" that would warrant abatement of the negligence penalty.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE02-20050206.LOF
02-20050207.LOF**LETTER OF FINDINGS NUMBERS: 05-0206, 05-0207**
CORPORATE INCOME TAX
For Years 2000-2002

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 Income Tax – Consolidated Returns**

Authority: Ind. Code § 6-2.1-5-5

Taxpayers protest the disallowance of consolidated returns between two entities.

STATEMENT OF FACTS

Taxpayers are two companies that are registered to do business in Indiana. Taxpayers are wholly owned subsidiaries of a parent corporation that is not registered to do business in Indiana. Taxpayers filed consolidated gross income tax returns for the years in question, but did not file consolidated adjusted gross income tax returns. However, upon review, the Department disallowed the consolidation for gross income tax purposes and assessed additional tax and penalty.

I. Gross Income Tax – Consolidated Returns**DISCUSSION**

Taxpayers argue that, because they are wholly owned by a common corporation, they meet the affiliation test provided by Ind. Code § 6-2.1-5-5, which provides a statutory test for eligibility for consolidation. In this case, Taxpayers have provided sufficient information to conclude that the protest should be sustained.

FINDING

The taxpayer is sustained.

DEPARTMENT OF STATE REVENUE

02-20050213.LOF

LETTER OF FINDINGS NUMBER: 05-0213
Corporate Income Tax
For the Years 1998-2004

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. Corporate Income Tax—Assessment**

Authority: IC 6-8.1-5-1(b); IC 4-30; IC 4-31; IC 4-32; IC 4-33; IC 4-30-1-1; IC 4-30-18-1; IC 4-31-1-2; IC 4-31-6; IC 4-31-9; IC 4-32-1-2; IC 4-32-4-1; IC 4-32-4-2; IC 4-32-9; IC 4-32-9-16; IC 4-32-9-18; IC 4-32-9-30, -31, -32, -33; IC 4-33-1-1; IC 4-33-1-2; IC 4-33-6; IC 4-33-6-1; 4-33-6-3.5; IC 4-33-7; IC 4-33-8; IC 4-33-8-2; IC 4-33-8-4; IC 4-33-8-6; IC 4-33-8-3; IC 4-33-8-2; IC 4-33-8-4(2); IC 4-33-9-8; IC 4-33-9-12; 4-33-13-1; IC 4-33-13-1.5; IC 6-3-2-1(b); 68 IAC 2-6-29(1); IRC § 501(c)(19); IRS Publication 3386; IRS Publication 598; IRS Publication 3079

Taxpayer protests the method by which the audit arrived at the amount of taxpayer's tax liability.

STATEMENT OF FACTS

Taxpayer is a tax exempt veterans organization under IRC § 501(c)(19). Taxpayer was assessed unrelated business income on receipts from nineteen unsanctioned slot machines operated by Taxpayer. The income was computed by deducting payouts and a portion of the business expenses from the gambling receipts. The building expenses were calculated based on the square footage of floor space covered by the slot machines.

Taxpayer protests the method the audit used to calculate the amount of taxpayer's liability, arguing that expense deductions for telephones, repairs, payroll processing, office supplies, dues, advertising, and kitchen wages should have been allowed to offset the income earned from gambling.

DISCUSSION

Under Indiana code, passed into law by the Indiana General Assembly, all tax assessments are presumed to be valid and accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC § 6-8.1-5-1(b). The Indiana General Assembly has passed into law what is permissible and impermissible gambling in the State of Indiana. IC § 4-30 establishes an Indiana state lottery. IC § 4-31 establishes pari-mutuel wagering on horse races. IC § 4-32 establishes games of chance. And IC § 4-33 establishes riverboat gambling. Gambling in Indiana is regulated; organizations are required to be registered and licensed.

The Indiana General Assembly has stated that the purpose of establishing state lottery games is to “enable the people of Indiana to benefit from significant additional money for capital improvements.” IC 4-30-1-1. No person or organization may operate a lottery in Indiana; only the state lottery commission may operate a lottery. IC § 4-30-18-1.

The Indiana General Assembly has stated that the purpose of permitting pari-mutuel wagering on horse races in Indiana is “to ensure that [it] will be conducted with the highest of standards and the greatest level of integrity.” IC § 4-31-1-2. Racetrack personnel and racing participants are required to be licensed. *See*, IC § 4-31-6. Taxation and distribution of pari-mutuel revenues is highly regulated. *See*, IC § 4-31-9.

The Indiana General Assembly has stated that the purpose of permitting games of chance is “to permit a licensed qualified organization (1) to conduct bingo events, charity game nights, door prize drawings, and raffles; and (2) to sell pull tabs, punchboards, and tip boards; as a fund raising activity for lawful purposes of the organization.” IC § 4-32-1-2. Organizers are required to withhold state income tax on prizes awarded to a winner and to submit that tax. *See*, IC § 4-32-4-1 and IC § 4-32-4-2. Organizations are required to be licensed and are regulated in the conduct of the games. *See*, IC § 4-32-9. Under IC § 4-32-9-16, the Department is permitted by rule to set the allowable expenditures of a qualified organization. The Department has the authority, granted by the Indiana General Assembly, to set the guidelines for allowable expenditures. This directly implies that the Department also may set the guidelines for permissible deductions of expenses. All net proceeds from an allowable event and related activities may only be used for the lawful purposes of the qualified organization. *Id.* There are limits on the number and frequency of events that may be held. IC § 4-32-9-18. There are limits on the value of prizes. IC §§ 4-32-9-30, -31, -32, -33. There are many more statutes regulating charity gaming; these are named to demonstrate that strict regulations and statutes exist.

Additionally, there is the issue and existence of casino gambling. The people of Indiana, acting through the General Assembly, restrict casino gambling solely to licensed riverboats. Casino gambling is restricted to counties that border Lake Michigan, the Ohio River, or a historic hotel district. *See*, IC § 4-33-1-1. The General Assembly highly restricts where casino gambling may be conducted. The Indiana General Assembly has stated that the purpose of permitting riverboat casino gambling is “to benefit the people of Indiana by promoting tourism and assisting economic development. The public’s confidence and trust will be maintained only through: (1) comprehensive law enforcement supervision; and (2) the strict regulation of facilities, persons, associations, and gambling operations under this article.” IC § 4-33-1-2. Owners are to be licensed. *See*, IC § 4-33-6. There are restrictions on who may be an owner, *id.*, and how many licenses may be issued, IC § 4-33-6-1 and IC § 4-33-6-3.5. Suppliers are to be licensed. *See*, IC § 4-33-7. The occupational employees of a riverboat are to be licensed. *See*, IC § 4-33-8. The backgrounds of the employees are investigated and they are fingerprinted. *See*, IC § 4-33-8-2, IC § 4-33-8-4, and IC § 4-33-8-6. Felons are not permitted to hold an occupational license. IC § 4-33-8-3. An occupational license is must be renewed annually. IC § 4-33-8-2. The person only may be employed by one riverboat. IC § 4-33-8-4(2). All of the above-mentioned statutes have been named, so as to outline the strict regulatory guidelines established by the people of the State of Indiana acting through their duly elected voices in the General Assembly.

Under IC § 4-33-9-8, casino gambling equipment and supplies may be purchased or leased only from licensed suppliers. IC § 4-33-9-12 does not permit those under the age of twenty-one to be in any area in which casino gambling is occurring. IC § 4-33-13-1 and IC § 4-33-13-1.5 outline the tax schedules for revenues earned from casino gambling. This tax rate is as low as 15% and as high as 35%. Currently, the corporate income tax rate is 8.5%. *See*, IC § 6-3-2-1(b). The 8.5% corporate income rate is less than the 15% minimum tax assessed against casino gambling on riverboats. Were Taxpayer legally sanctioned to operate a casino, it would have to pay almost double the tax rate that the Department assessed for Taxpayer’s unsanctioned operation of slot machines. Were Taxpayer legally operating these slot machines, it would be held to the gaming regulations as to the payout requirements. *See*, 68 IAC 2-6-29(1). According to the Indiana Gaming Commission, riverboat casinos’ payouts average around 93%. Taxpayer pays out at around 80%. Taxpayer states that the bartender at the post pays out any winnings.

Tax assessments on activities are not based upon the morality or legality of the activities. The Department does not base an assessment upon whether the income earned by a taxpayer is earned legally; the Department simply applies the tax statutes and regulations. At issue in this case is income earned by Taxpayer from unrelated business activities. This requires a discussion as to the functions and purposes of an IRC § 501(c)(19) veterans’ organization.

The IRS has issued three publications useful to this discussion:

Publication 3386 Tax Guide—Veterans’ Organizations (6/99)

Publication 598 Tax on Unrelated Business Income of Exempt Organizations (3/00)

Publication 3079 Gaming Publication for Tax-Exempt Organizations (4/98).

Publication 3386 provides that: “[v]eterans’ organizations occupy a special place in the world of exempt organizations.” *Id.* at 3. Over the years, Congress has provided more flexible exemption provisions to veterans’ organizations to help keep them vibrant contributors to veterans and their communities at large. *See id.* Originally, veterans’ organizations were required to have a membership of at least 75% war veterans in order to be tax-exempt; but because of waning membership over the years, Congress changed the membership requirement to 75% veterans. *See id.*, and IRC § 501(c)(19)(B). However, Congress still requires that no more than 2.5% of the members be non-veteran related persons in order for the organization to maintain tax-exempt status. *See id.*

Congress has stated that appropriate purposes of an IRC 501(c)(19) veterans’ organization include:

- A. promoting the social welfare of the community,
- B. assisting needy and disabled veterans, widows, or orphans of deceased veterans,
- C. providing entertainment, care and assistance to hospitalized veterans or members of the Armed Forces of the United States,
- D. perpetuating the memory of veterans and comforting their survivors,
- E. conducting programs for religious, charitable, scientific, literary, or educational purposes,
- F. sponsoring or participating in patriotic activities,
- G. providing insurance benefits to members or members’ dependents, and
- H. providing social and recreational activities for members.

See IRS Pub. 3386 at 9. IRS Publication 3386 states that a veteran’s organization can jeopardize its tax-exempt status if it does not limit its activities and operations to post members—but instead opens its facilities to the general public. A post may operate a bar & restaurant and also may provide gambling, but these must be restricted to members and their invited guests. All expenses of an invited guest are to be paid by the post member.

Taxpayer engages in many activities and opens its post to the general public for many reasons. Taxpayer has a kitchen area, restaurant area, bar area, indoor pool, banquet/meeting rooms, and several other rooms. Taxpayer receives income from dues, sales of food and beverages, miscellaneous sales of merchandise to members, renting out rooms for banquets, wedding receptions, meetings, etc. Income is also received from having bingo three times a week and selling pull-tabs during bingo and at the bar area. Taxpayer also has twenty-six Cherry masters slot machines. In the Department’s audit of Taxpayer, only the income from the unsanctioned slot machines was assessed tax as being unrelated business income. The Department has sought only to tax the unsanctioned gambling as unrelated business income. The Department has computed the reasonable deductions related to the generation of that income.

Expenses, but not losses, directly related to the earning of unrelated business income can be used as a deduction in calculating the income. There is no evidence to establish that any of the food and beverage related expenses, or other expenses taxpayer wishes to take as deductions, are directly related to gambling receipts. Taxpayer’s organizational purpose would have to be gambling in order for Taxpayer’s position to be valid. The Department has allowed a reasonable estimate of building expenses to offset the unrelated business income. No evidence has been submitted to support further deductions for expenses.

FINDING

Taxpayer’s protest concerning the method the audit used to arrive at its tax liability is denied.

DEPARTMENT OF STATE REVENUE

0420050263.LOF

LETTER OF FINDINGS NUMBER: 05-0263

Sales and Use Tax for 2003

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUE

I. Sales/Use Tax—Assessment on Purchase of Aircraft

Authority: IC 6-8.1-5-1(b); IC 6-6-6.5-2; IC 6-6-6.5-9; IC 6-2.5-3-2(b); IC 23-18-12-4; Department of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); Cambria Iron Co., v. Union Trust Co., 55 N.E. 745 (Ind. 1899).

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 limited liability company. It purchased an aircraft in October 2003. In May 2004, the Department received an annual aircraft report from [IEA], an Indiana airport. The report listed Taxpayer’s aircraft as being based at the airport. The name of the owner attributed to the aircraft was listed as [JM], a member of Taxpayer LLC. In July 2004, the Department sent JM a letter informing him that the aircraft was not registered with the State of Indiana; an application was enclosed with the letter.

In September 2004, Taxpayer sent a letter to the Department stating that Taxpayer had enclosed the Aircraft Registration application. The application listed Taxpayer LLC as the owner of the aircraft. Taxpayer claimed an exemption from sales and use tax due on the purchase of the aircraft, checking off rental and lease to others. Taxpayer did not enter its registered retail merchant number on the application, nor did Taxpayer check off whether the aircraft was purchased from a registered Indiana dealer. Additionally, Taxpayer stated on the application that the aircraft was purchased in October 2003, but was moved to Indiana in March 2004.

The Department sent Taxpayer a letter in November 2004 requesting Taxpayer to substantiate the eligibility of the rental and lease exemption. Enclosed with the letter was a proposed assessment. Taxpayer submitted documentation to the Department. In December 2004, the Department requested additional documentation to substantiate the exemption.

In December 2004, the aircraft was registered with the FAA under the corporate name [MPA LLC]. The owner of the aircraft currently named on the FAA certificate is [MPA LLC]. When the Department had checked on the registration of the aircraft several months earlier, in June 2004, the FAA had listed the registration of the aircraft as pending. “Registration pending” is the term used by the FAA when it receives notice of a sale of an aircraft and the previous owner has released claim on the aircraft, but the new owner has not submitted an application for registration. The FAA marked the aircraft as registration pending in January 2004.

In April 2005, the Department sent Taxpayer a letter denying the exemption. The basis of the denial of the exemption was that the lease agreement named Taxpayer as a party to the agreement, but the aircraft was not registered with the FAA as being owned by Taxpayer. As well, Taxpayer had not submitted the required sales and use tax returns and had submitted no sales tax payments collected on the leases. It needs to be noted that in November 2004, Taxpayer had submitted a check in the amount of \$485.60. Taxpayer also had included a completed Form ST-103, *Sales and Use Tax*, for the period January through December 2003, listing zero as the amount of sales and use tax due. The coupon had been due on or before February 2, 2004—as stated on the coupon. The Department returned the check to Taxpayer, stating in a letter that the Department cannot accept and process the payment for sales and use tax for Tax Year 2004 until February 2005 since Taxpayer was an annual filer.

Taxpayer filed a protest and a hearing was held. Because Taxpayer did not appear at the hearing, this letter of finding is written based upon the information within the file.

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).

IC 6-6-6.5-2 requires an Indiana resident who owns an aircraft to register the aircraft with the state no later than 31 days after the purchase date. IC 6-6-6.5-9 lists eight exemption provisions not requiring registration; IC 6-6-6.5-9(6) states that an aircraft owned by an Indiana resident is exempt from registration if the aircraft is not based in this state at any time—provided that the owner files the required form, Form AE-1, not later than 31 days after the date of purchase; and furnishes the Department with evidence, satisfactory to the Department, verifying where the aircraft is based during the year. Form AE-1, *Based Out of State Certificate of Exemption for Aircraft*, requires that the Indiana resident attach to the form as evidence of basing out of state: (1) the hangar lease agreement, the hangar rent receipts (minimum 11 months), or a letter from the airport manager; and (2) a paid sales tax receipt or the current state registration.

Summarizing Indiana law as it applies to Taxpayer—under the requirements of Indiana statute, an Indiana resident that owns an aircraft is required to inform the state whether its newly purchased aircraft is based within or outside Indiana by filing either a registration form or an exemption from registration form within 31 days of the purchase date. Taxpayer did neither. The aircraft was purchased in October 2003, which means that the State of Indiana needed to be informed by November 2003.

On October 1, 2003 Taxpayer applied to the Department to register as a retail merchant, presumably in contemplation of an aircraft purchase. This indicates that Taxpayer contacted the Department concerning its enterprise. Since the name of Taxpayer includes the term, “Aviation, LLC” within its name, it is reasonable to believe Taxpayer’s enterprise involved aircraft—for which Taxpayer has a duty under Indiana law to register if an aircraft is purchased.

Under IC 6-2.5-3-2(b), use tax is imposed on the storage, use, or consumption of an aircraft, if the aircraft is: acquired in a transaction that is an isolate of occasional sale; and is required to be titled, licensed, or registered by this state for use in Indiana. Taxpayer as an Indiana resident has the responsibility to demonstrate that sales and use tax does not apply to its purchase of the aircraft. The Indiana Supreme Court has held that exemption statutes are strictly construed against a taxpayer; a taxpayer has the burden of establishing its entitlement to an exemption. Department of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003).

The Department would have become alerted to Taxpayer’s purchase of the aircraft sooner than it did in this case. Because the aircraft was not registered with the FAA until December 2004—fourteen months after the purchase—the Department did not know Taxpayer had based an aircraft in Indiana until May 2004—over six months after the purchase. The Department discovered the aircraft when it was listed by [IEA], an Indiana airport, on its annual report of aircraft based there. The name listed as having acquired a hangar was not Taxpayer’s name, but that of the LLC’s member, [JM]. This raises suspicion on several levels, including whether

the aircraft was being used personally and why the aircraft was not registered in Indiana. Documentation from another Indiana airport, [IIA], indicates that the aircraft had been hangared and based in Indiana since January 2004. The lease was a one-year agreement, set to expire in January 2005. The lessee named on the lease was [JM], not Taxpayer. [JM] listed his title as owner on the hangar lease agreement.

The insurance policy providing liability coverage named the insured as [MPA LLC], not as Taxpayer. The period covered was December 2003 to December 2004 and the covered permitted uses included "Pleasure and Business." The bill of sale for the aircraft, signed in October 2003, listed [MPA] as the purchaser. Lease agreements to rent the aircraft list Taxpayer as the lessor. The Department has asked Taxpayer to explain why three differing representations of owners appear contemporaneously. Taxpayer has not provided adequate documentation and explanation. Taxpayer did provide documentation of the change of entity name from [MPA LLC] to Taxpayer. However, the Certificate of Amendment changing the LLC name from [MPA] to Taxpayer was not filed until the end of November 2004. The Department spoke with the Secretary of State office; its representatives explained that the date sealed on the amendment as the effective date of the name change is the date the request was filed. This complies with IC 23-18-12-4. For the first year the aircraft was owned, [JM], [MPA], and Taxpayer are represented as the owners on various documents.

Indiana Form 7695, Application for Aircraft Registration or Exemption, submitted by Taxpayer in September 2004, listed the name of the owner of the aircraft as Taxpayer. The Department originally denied the tax exemption filed by Taxpayer on the basis that the leases to rent the aircraft were signed by Taxpayer, but the owner of the aircraft was [MPA]. This cannot be lightly overlooked. The leases to rent the aircraft were signed in January and February 2004. The name change amendment was filed over ten months later. In overview, for the first fourteen months, Taxpayer, [MPA LLC], and [JM] all stated public representations as to the ownership and control of the aircraft. Taxpayer has been lax in its duties to file paperwork with both the Department and the FAA. Taxpayer seeks the benefits of an exemption, but has been unwilling to assume the associated responsibilities to establish the exemption. The Indiana Supreme Court has long held that a party may not have the benefits without the burden. See Cambria Iron Co., v. Union Trust Co., 55 N.E. 745, 749 (1899).

Taxpayer has not demonstrated to the Department a coherent chain of ownership and control. Tax exemption determinations are based upon an analysis of the transaction. In this case, the Department is unable to trace the transactions in a coherent manner. Taxpayer has not been responsive to explain who was using the aircraft in what manner at what time. Three separate entities held themselves out as owning and controlling the aircraft. The law allows the establishment of separate entities to protect against liability. But the entity formalities must be observed. Taxpayer, [MPA LLC], and [JM] have blurred and blended the formalities. Taxpayer did not affirmatively fulfill his regulatory and statutory obligations to register the aircraft in a timely manner. As well, Taxpayer has not sufficiently substantiated its entitlement to a sales and tax exemption for rental and leasing.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420050265.LOF

LETTER OF FINDINGS: 05-0265

Gross Retail Tax

For 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Like-Kind Exchange – Gross Retail Tax.

Authority: IC 6-2.5-1-5(a); IC 6-2.5-1-6(a); IC 6-2.5-1-6(a)(2); IC 6-2.5-1-6(c).

Taxpayer challenges the decision denying a trade-in allowance – and the attendant assessment of gross retail tax – on the purchase of a Cessna aircraft.

STATEMENT OF FACTS

Taxpayer purchased a Cessna aircraft from seller on February 4, 2004. The price of the Cessna was \$1,800,000. At the time of the purchase, a trade-in allowance of \$1,000,000 was given for a Beechcraft airplane. Taxpayer paid seller \$800,000 in cash. The seller did not collect sales tax on any portion of the transaction.

The Department of Revenue (Department) determined that taxpayer did not own the Beechcraft on February 4, 2004. Accordingly, the Department found that taxpayer was not entitled to the trade-in allowance and assessed taxpayer for use tax based on the purported \$1,000,000 trade-in allowance.

Taxpayer challenged the Department's decision arguing that when it "entered into the transaction, it did so under the belief that a like kind exchange would take place." An administrative hearing was conducted during which taxpayer's representatives explained the basis for its protest. This Letter of Findings results.

DISCUSSION

Taxpayer argues that at the time it purchased the Cessna on February 4, 2004, it contemplated that a like-kind exchange would take place. Taxpayer concludes that the \$1,000,000 is exempt from gross retail tax under IC 6-2.5-1-5(a). IC 6-2.5-1-5(a) states in relevant part as follows:

"Gross retail income" means the total gross receipts of any kind or character, received in a retail transaction, except that part of the gross receipts attributable to: (1) the value of any tangible personal property received in a like kind exchange in the retail transaction[.]

Like-kind exchanges are defined in IC 6-2.5-1-6(a) which states that:

"Like kind exchange" means the reciprocal exchange of personal property between two (2) persons, when:

- (1) the property exchanged is of the same kind or character, regardless of grade or quality; and (2) the persons exchanging the property both own the property prior to the exchange.

Taxpayer claims that it was organized as a limited-liability company (LLC) on February 4, 2004. Taxpayer indicates that the original owners of the LLC transferred the Beechcraft as a "capital contribution" to the LLC on February 6, 2004. According to taxpayer (the LLC), it owned the Beechcraft at the time the LLC purchased the Cessna. Taxpayer errs. The "Aircraft History Report" indicates that the Beechcraft remained the property of one of the LLC's organizers until August 31, 2004 when it was transferred – not to taxpayer – but to a third party not directly involved in the Cessna purchase.

Taxpayer asks that the Department honor the "spirit" of the transaction. Taxpayer claims that – despite the Beechcraft's muddled ownership history – the "spirit of [the] transaction was always to use the [Beechcraft] as a trade in aircraft." Taxpayer's intention to the contrary, taxpayer is essentially correct in noting that the Cessna purchase agreement "was based upon incomplete and ill thought out advice."

The Department is unable to overlook the simple fact that taxpayer (the LLC) did not own the Beechcraft at the time taxpayer purchased the Cessna. Despite taxpayer's assertion that the Beechcraft was transferred as a capital contribution on February 6, 2004, there is no substantive indication that taxpayer *ever* owned the Beechcraft.

The statutory requirement is clear. In order to qualify as a like-kind exchange, "the persons exchanging the property [must] both own the property prior to the exchange." IC 6-2.5-1-6(a)(2). Moreover, the statute states that "a 'like kind exchange' *does not* occur when (1) the transaction involves more than two (2) persons[.]" IC 6-2.5-1-6(c) (*Emphasis added*).

Taxpayer did not own the Beechcraft when it bought the Cessna; taxpayer was not entitled to offer the Beechcraft as a trade-in at the time it bought the Cessna.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420050364.LOF

LETTER OF FINDINGS NUMBER: 05-0364

Use Tax for 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

Use Tax—Rental and lease of aircraft

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2(b); IC 6-6-6.5-2; IC 6-2.5-5-8(b); Gregory v. Helvering, 293 U.S. 465 (1935); Horn v. Commissioner, 968 F.2d 1229 (D.C. Cir. 1992); Cambria Iron Co., v. Union Trust Co., 55 N.E. 745 (Ind. 1899); Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); *Black's Law Dictionary*, Seventh Edition.

Taxpayer protests the assessment of sales and use tax on an aircraft it asserts is rented and leased.

STATEMENT OF FACTS

Taxpayer is a for-profit Indiana S-corporation. In November 2003, Taxpayer purchased an aircraft and submitted its Application for Aircraft Registration, as required by law. On the application, Taxpayer claimed an exemption from sales and use tax on the purchase, asserting "Rental or Lease to others." The Department requested documentation from Taxpayer to substantiate the

exemption. The Department determined that the aircraft was not being used for rental or lease and assessed use tax. Taxpayer protested and a hearing was held.

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

IC 6-2.5-3-2(b) imposes use tax on the storage, use, or consumption of an aircraft if the aircraft is acquired in an isolated or occasional sale and is required to be registered by the State of Indiana. Because Taxpayer is an Indiana corporation with an aircraft based within Indiana, it was required to register the aircraft with the State. *See* IC 6-6-6.5-2. Taxpayer promptly registered the aircraft. On the registration form, Taxpayer claimed exemption from sales and use tax, asserting rental or lease to others, as provided by IC 6-2.5-5-8(b).

The Department requested documentation to substantiate the claim for exemption. Taxpayer provided copies of leases and a copy of the aircraft insurance. The leases all stated:

[Taxpayer] will maintain an insurance policy for liability and physical damage on the Aircraft.

[Taxpayer] will ensure that Renter is listed as a named insured under such insurance policy.

An examination of Taxpayer's insurance policy on the aircraft reveals under Item 4 that the aircraft will be used only for non-commercial use. The policy defines "non-commercial" to mean:

private pleasure and business use, excluding any use for hire, money or any form of reward or compensation. Being reimbursed for or sharing the direct expenses of a **flight** if the sum of these expenses does not result in a profit to **you** or anyone is not excluded. [Bold original]

The definition of "insured" within the policy, states in relevant part:

But excluded as an **insured** is any:

...
(b) person or organization renting **your aircraft**
...

[Bold original]

Since the rental agreement states that Taxpayer will ensure that the renter is listed as a named insured under Taxpayer's insurance policy, the agreements for use tax purposes do not establish a qualified exemption for rental or lease to others.

Taxpayer is a for-profit corporation. However, the rental rate set by Taxpayer is significantly below the market rate to rent comparable aircraft. While the Department cannot establish at what rate a taxpayer should rent an aircraft, the Department can use that rate as indicia as to whether Taxpayer has a genuine motive to rent the aircraft for profit to others or whether Taxpayer is using the exemption to avoid paying sales and use tax on the purchase of the aircraft.

The past and present shareholders of Taxpayer corporation are [DT], [SM], [DP], [MS], [GB], [DD], and [FK]. Of the four aircraft rental agreements submitted to the Department by Taxpayer to support its claim for a tax exemption, all four of the executed agreements were between Taxpayer and its shareholders [DT], [SM], [DD], and [FK] as individuals. Taxpayer is not engaged in renting and leasing to others; this is a cost-sharing arrangement.

The lease agreements between Taxpayer and several of its shareholders as individuals fall squarely within the doctrine of sham transaction. The sham transaction doctrine is well established in state and federal tax jurisprudence. In Gregory v. Helvering, 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*, 968 F.2d 1229, 1236-7 (D.C. Cir. 1992).

The purchase of the aircraft by Taxpayer triggered sales and use tax. The individual shareholders who executed agreements with Taxpayer were able to secure the use of an aircraft for themselves without having to pay \$18,300 of sales and use tax at the time of the purchase. By setting the rental rate substantially below market rate, the individuals who desire to use the aircraft pay only a nominal sales tax when they "rent" the aircraft to themselves. Because renters are also shareholders, the money paid to Taxpayer S-corporation is passed back through to the shareholders. The net result is a wash transaction, and the shareholders, by way of the S-corporation, have avoided paying the upfront sales and use tax due on the purchase of the aircraft.

The shareholders have structured the "rental" transactions to secure the benefits of an exemption—but have not assumed 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.*, 55 N.E. 745, 749 (Ind. 1899). 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).

Nonrule Policy Documents

The relationship between Taxpayer and its “renters” is interfamilial. These agreements are not arms-length transactions with others. 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, but does not have a profit motive. The Department determined that Taxpayer is not engaged in rental or leasing for the purposes of the sales and use tax exemption statutes.

FINDING

For the reasons stated above, the Department denied Taxpayer’s protest.

DEPARTMENT OF STATE REVENUE

04-20050368P.LOF

LETTER OF FINDINGS NUMBER: 05-0368P STATE GROSS RETAIL TAX For Years 2001 AND 2003

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUES

I. State Gross Retail Tax —Penalty Assessment

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the proposed assessments of penalty on an assessment.

STATEMENT OF FACTS

Taxpayer is an Indiana Limited Liability Company that provides telecommunication services to customers within Indiana. Services include telephone, data (internet) and video (cable television or CATV) services through a single fiber-optic and coaxial cable system. After an initial audit of the Company’s operations, the Department assessed additional use tax. Taxpayer protested the imposition of penalty.

I. State Gross Retail Tax —Penalty Assessment

DISCUSSION

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code further provides in 45 IAC 15-11-2:

(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.

Taxpayer argues that the penalty was inappropriate based on taxpayer’s overall compliance and the relatively new technology and products taxpayer provides. Standing alone neither of the taxpayer’s arguments are dispositive but they are factors which are indicative of the taxpayer’s reasonable care, caution, or diligence.

FINDING

Taxpayer protest sustained.

DEPARTMENT OF STATE REVENUE**Revenue Ruling #2005-13ST****November 10, 2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE #1**Sales/Use Tax – Parent's acquisition of tools and subsequent sale of same to subsidiary****Authority:** IC 6-2.5-5-8

The taxpayers request the Department to rule on the application of sales/use tax to the acquisition of tools and subsequent sale of same by the parent to the subsidiary.

ISSUE #2**Sales/Use Tax – Subsidiary's purchase of tools from parent****Authority:** IC 6-2.5-5-8, IC 6-2.5-3-2

The taxpayers request the Department to rule on the application of sales/use tax to the purchase of tools from the parent by the subsidiary.

STATEMENT OF FACTS

Beginning on July 1, 2002, Distributor, headquartered in Indiana, entered into an agreement with its parent company, Supplier, also headquartered in Indiana, to distribute (sell) Supplier products throughout the United States. Effective July 1, 2003, Distributor and Supplier executed a new revised distribution agreement. Hereinafter, the distribution agreement between Distributor and Supplier in effect beginning July 1, 2002, through June 30, 2003, is referred to as the "First Agreement," and the revised distribution agreement between the Distributor and Supplier effective July 1, 2003, through the present date is referred to as the "Second Agreement." Under both the First Agreement and the Second Agreement, in addition to buying products from Supplier for resale, Distributor also purchased from Supplier certain tools that are required to correctly install or adjust the products.

Supplier purchases approximately 75% of the tools from third-party suppliers located both inside and outside of Indiana. These tools are delivered to Supplier in Indiana, where Supplier inspects the tools and holds them in inventory. The remaining tools (approximately 25%) are machined by a subsidiary of Supplier also located in Indiana, that provides industrial processing services to Supplier in connection with those tools not acquired from third-party vendors. Supplier procures, owns and causes to be delivered to subsidiary all materials used to machine the tools by subsidiary. When completed, these tools are delivered by subsidiary to Supplier and inspected and held in inventory by Supplier, along with those tools acquired from third party suppliers. When Distributor informs Supplier that it wishes to purchase one or more tools, the tools are removed from inventory and they are then etched by Supplier to include the logo, trademark, work order, part number, size, diameter, and a tool code. After etching, the tools are then packaged, and delivered to Supplier's warehouse in Indiana, from which location they are shipped.

When Distributor purchases the tools from Supplier, in lieu of formal invoicing, the tools are charged to Distributor at Supplier's cost, removed from inventory on Supplier's books and records, and capitalized on Distributor's books and records, at cost.

While Distributor sells the products to its customers, Distributor only sometimes sells the tools for an extra charge. In most cases, Distributor supplies such tools to its customers at no extra charge. Distributor also makes available to its independent sales representatives a limited number of tools at no charge, for use by Distributor customers. Distributor continues to hold title to the tools supplied to its customers and sales representatives which must be returned to Distributor upon its request. However, after the Tools have been supplied to a hospital or medical care facility where they are used in patient care, they are only on rare occasions returned to Distributor.

Under the First Agreement, upon receipt of an order, Supplier would arrange for the shipment and delivery of the requisite products and tools from its inventory located in Indiana directly to Distributor's customer or sales representative by common carrier, and Distributor would pay and reimburse Supplier for all freight costs. Pursuant to the terms of the First Agreement, title and risk of loss to the products and tools passed from Supplier to Distributor either upon the delivery of those items to Distributor's customer if the delivery destination was inside the State of Indiana or at the Indiana state line if the delivery destination was outside the State of Indiana.

The First Agreement provided in part as follows:

Section 2.6 Delivery. Supplier shall cause delivery of the Products to the locations identified by Distributor in each purchase order. Title and risk of loss to the Products shall pass from Supplier to Distributor (i) upon delivery to Distributor's customer, if the delivery destination is inside the State of Indiana, and (ii) at the Indiana state line, if the delivery destination is outside the State of Indiana. Distributor shall pay and reimburse Supplier for all freight costs and each party shall bear its own insurance costs associated with the shipment and delivery of the Products. Supplier reserves the right to split an order and make delivery in installments or partial shipments, and in such event, each installment or partial shipment shall be separately invoiced and paid

for when due, without regard to subsequent deliveries.

Under the Second Agreement, upon receipt of an order, Supplier would remove the requisite Supplier-made products and tools from its inventory in its Indiana warehouse and then move them to the packaging area in that warehouse for shipment by common carrier to Distributor's customer's or sales representative's location. Although all of this activity takes place in the Supplier warehouse, under the Second Agreement, Supplier is deemed to have delivered the products and tools to Distributor upon physical delivery of those items to the packaging area in Supplier's Indiana warehouse. Risk of loss and title to these items pass from supplier to Distributor at this point under the Second Agreement. Distributor is responsible for final packaging and shipping the product and tools under the Second Agreement.

The Second Agreement provides in part as follows:

Section 2.6 Delivery; Risk of Loss.

(a) The terms of delivery of the ordered Products shall be EXW, [Indiana] (Incoterms 2000), except that in addition to being responsible for shipping the Products, Distributor also shall be responsible for packaging all Products at Supplier's warehouse prior to shipment. Supplier shall be deemed to have delivered all Products to Distributor upon delivery of the Products to the packaging area at Supplier's warehouse in [Indiana] ("Delivery"). Upon and after the Delivery of the Products, Distributor shall be solely responsible for packaging the Products and all aspects of the loading, handling and shipment of the Products to Distributor's desired destination, and all costs, liabilities and obligations related thereto. Without limiting the foregoing, Distributor shall be responsible for identifying and contracting with all carriers and insuring the Products after Delivery. Supplier reserves the right to split an order and make Delivery in installments, and in such event, each installment shall be separately invoiced and paid for when due, without regard to any subsequent Delivery of Products. Distributor shall use commercially reasonable efforts to cause the Products to be packaged and shipped within two (2) business days of the Products being delivered to the packaging area of Supplier's warehouse in [Indiana].

(b) Title and risk of loss to the Products shall pass from Supplier to Distributor at the time of Delivery of the Products.

(c) Supplier shall designate a secure holding area in its [Indiana] plant where Distributor may store, keep or locate Products for which Distributor has taken Delivery. Products in such holding area shall be segregated from products of Supplier and its other customers. Supplier shall use commercially reasonable efforts to maintain secure and environmentally consistent conditions for such holding area comparable to the conditions it maintains for its own products. Notwithstanding the foregoing, Distributor understands and acknowledges that Supplier shall not be liable for loss or damage of any kind to the Products after Delivery of the Products by Supplier.

DISCUSSION – ISSUE #1

The taxpayers request the Department to rule on the application of sales/use tax to the acquisition of tools and subsequent sale of same by parent to the subsidiary.

IC 6-2.5-5-8(b) 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.

In the instant case, it is clear both the acquisition of tools by the Supplier (parent) and the subsequent sale of same to the Distributor (subsidiary) fall within the "resale" exemption afforded by above IC 6-2.5-5-8, therefore, these transactions are not subject to sales/use tax.

RULING – ISSUE #1

The Department rules the Supplier's (parent's) acquisition of tools from third-party suppliers and tools machined by a subsidiary of the Supplier on behalf of the Supplier, the Supplier's inspection, etching, and packaging of the tools, and the Supplier's sale of tools to the Distributor (subsidiary) are not subject to Indiana sales/use tax.

DISCUSSION – ISSUE #2

The taxpayers request the Department to rule on the application of sales/use tax to the purchase of tools from the parent by the subsidiary.

The "resale" exemption (IC 6-2.5-5-8; see Discussion - Issue #1) is applicable to the purchase of tools from the Supplier (parent) by the Distributor (subsidiary) in instances where the Distributor sells the tools to customers or sales representatives. In instances where the Distributor supplies tools to the customers or sales representatives located in Indiana at no charge, the Distributor is subject to Indiana use tax on same pursuant to IC 6-2.5-3-2 (imposition statute for use tax). In instances where the Distributor supplies tools to customers or sales representatives located outside of Indiana, the Distributor is not subject to Indiana sales and use tax on such tools, but might be subject to use tax in the state to where the tools are shipped.

RULING – ISSUE #2

The Department rules the purchase of tools from the Supplier (parent) by the Distributor (subsidiary) is not subject to sales/use tax when the Distributor sells the tools to customers or sales representatives. In cases where the Distributor supplies tools at no charge

and ships them to customers or sales representatives located in Indiana, the Distributor is subject to Indiana use tax on the tools. In cases where the Distributor supplies tools at no charge and ships them to customers or sales representatives located outside of Indiana, the Distributor is not subject to Indiana sales and use tax on the tools, but might be subject to use tax in the state to where the tools are shipped.

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.

**DEPARTMENT OF STATE REVENUE
Revenue Ruling 2005-15ST
December 12, 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.

Revenue Ruling #2005-09ST, printed at 28 IR 3747, is repealed.

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04-18 Clemency for Darnell Williams, Doc No. 872037-ISP	28 IR 1564
04-19 Declaring a disaster emergency in the state of Indiana due to severe storms, flooding and tornadoes	28 IR 1565
04-20 Michael A. McKinney #995375, medical clemency	28 IR 1566
04-21 Roger Good, pardon	28 IR 1567
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04-28 David Grant Pursell, pardon	28 IR 1572
04-29 Christopher W. Vernon, pardon	28 IR 1572
04-30 Declaring a disaster emergency in the state of Indiana due to severe winter weather	28 IR 1573
04-31 Postponement of the date of expiration of rule until one year after date specified in Indiana Code 4-22-2.5	28 IR 1574
04-32 Declaring a utility service emergency in the state of Indiana during severe weather	28 IR 1882
04-33 Declaring a disaster emergency in the state of Indiana due to severe winter weather	28 IR 1882
04-34 James Lincoln, pardon	28 IR 1883
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04-35 Charles I. Thurman, pardon	28 IR 1885
04-37 Clemency for Michael Daniels, no. 13135	28 IR 1886
05-1 Creation of the office of secretary of commerce and coordination of the state's economic development and job training efforts	28 IR 1886
05-2 Creation of the office of management and budget	28 IR 1888
05-3 Creation of the office of inspector general	28 IR 1889
05-4 Continuing the office of public finance	28 IR 1891
05-5 Establishment of the "Buy Indiana" presumption	28 IR 1892
05-6 Directive to account for all state assets and to divest of unused or underutilized assets	28 IR 1893
05-7 Directive to the department of administration to log written state contracts on the Internet	28 IR 1894
05-8 Creation of the office of federal grants and procurements	28 IR 1895
05-9 Establishing and clarifying duties of state agencies for all matters relating to emergency management	28 IR 1896
05-10 Directive to establish medical error reporting and quality system	28 IR 1900
05-11 Recognition of private minority business enterprise certification	28 IR 1901
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05-13 Extending a utility service emergency in the state of Indiana during severe weather	28 IR 1903
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05-15 Creation of the Indiana department of child services	28 IR 1905
05-16 Creation of the office of faith-based and community initiatives	28 IR 1907
05-17 Creation of the office of technology	28 IR 1908
05-18 Maintenance of salary and health coverage for active duty military personnel employed by state government	28 IR 1910
05-19 Directive to department of local government finance regarding school building project financings	28 IR 1911
05-20 The effectiveness of population information from the United States Bureau of the Census for state law purposes	28 IR 2830
05-21 Greening the government	29 IR 323
05-22 Continuation of the Governor's Council for Physical Fitness and Sports	29 IR 324
05-23 Clemency for Arthur Paul Baird II, Doc No. 872036	29 IR 325
05-24 Operation Hoosier Relief - Hurricane Katrina	29 IR 327

05-25	Declaring a state of disaster emergency in the state of Indiana due to the influx of evacuees from areas devastated by Hurricane Katrina	29 IR 328
05-26	Waiver of regulations relating to motor carriers and drivers transporting gasoline, diesel fuel, and jet fuel and the transport of oversized tractor trailer loads	29 IR 329
05-27	Efforts by Indiana agencies and instrumentalities to assist in Hurricane Katrina relief	29 IR 331
05-28	Operation Hoosier Relief-Hurricane Rita	29 IR 1068
05-29	Waiver of regulations relating to motor carriers and drivers transporting gasoline, diesel fuel, jet fuel, propane, natural gas/CNG, and ethanol	29 IR 1969
05-30	The effectiveness of population information from the United States Bureau of the Census for state law purposes	29 IR 1070

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04-7 Gambling tax revenues and historic preservation	28 IR 1916
04-8 Department of insurance bulletin 123	28 IR 1917
04-9 Compensation for elected city officer	28 IR 1919
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1984	See 8 IR 249	(December 1984)
1985	See 9 IR 933	(January 1986)
1986	See 10 IR 175	(October 1986)
1987	See 11 IR 2790	(April 1988)
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1989	See 13 IR 792	(January 1990)
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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	
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50 IAC 21-4-1	A	05-142	28 IR 3623	
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65 IAC 5-18-5	A	05-136	*ER (28 IR 2993)	TITLE 135 INDIANA FINANCE AUTHORITY			
65 IAC 5-19	N	05-159	*ER (28 IR 3313)	135 IAC 2-1-1	A	05-257	29 IR 598
65 IAC 6-2-6	A	05-36	*ER (28 IR 2154)	135 IAC 2-2-1	A	05-257	29 IR 600
TITLE 68 INDIANA GAMING COMMISSION				135 IAC 2-2-3	A	05-257	29 IR 601
68 IAC 1-5-1	A	04-103	27 IR 3115	135 IAC 2-2-5	A	05-257	29 IR 601
68 IAC 2-3-5	A	04-103	27 IR 3115	135 IAC 2-2-10	A	05-257	29 IR 601
68 IAC 2-3-6	A	04-103	27 IR 3117	135 IAC 2-2-12	A	05-257	29 IR 601
68 IAC 2-3-9	A	04-103	27 IR 3118	135 IAC 2-3-1	A	05-257	29 IR 602
68 IAC 2-6-49	A	04-102	27 IR 3109	135 IAC 2-3-2	A	05-257	29 IR 602
68 IAC 2-7-12	A	04-102	27 IR 3109	135 IAC 2-4-1	A	05-257	29 IR 602
68 IAC 5-3-2	A	04-102	27 IR 3109	135 IAC 2-4-2	A	05-257	29 IR 602
68 IAC 5-3-7	A	04-102	27 IR 3109	135 IAC 2-4-4	A	05-257	29 IR 603
68 IAC 8-1-11	A	04-102	27 IR 3110	135 IAC 2-5-1	A	05-257	29 IR 603
68 IAC 8-2-29	A	04-102	27 IR 3110	135 IAC 2-5-2	R	05-257	29 IR 614
68 IAC 9-4-8	A	04-102	27 IR 3110	135 IAC 2-5-2.1	N	05-257	29 IR 603
68 IAC 10-1-5	A	04-102	27 IR 3110	135 IAC 2-5-3	A	05-257	29 IR 607
68 IAC 11-1-8	A	04-102	27 IR 3110	135 IAC 2-5-5	A	05-257	29 IR 607
68 IAC 11-3-1	A	04-102	27 IR 3110	135 IAC 2-7-1	A	05-257	29 IR 608
68 IAC 12-1-15	A	04-102	27 IR 3111	135 IAC 2-7-2	A	05-257	29 IR 608
68 IAC 14-4-8	A	04-102	27 IR 3112	135 IAC 2-7-3	A	05-257	29 IR 608
68 IAC 14-5-6	A	04-102	27 IR 3112	135 IAC 2-7-5	A	05-257	29 IR 608
68 IAC 15-1-8	A	04-102	27 IR 3112	135 IAC 2-7-6	A	05-257	29 IR 609
68 IAC 15-3-3	A	04-179	28 IR 237	135 IAC 2-7-7	A	05-257	29 IR 609
68 IAC 15-5-1.5	N	05-107	28 IR 3627	135 IAC 2-7-8	A	05-257	29 IR 609
68 IAC 15-5-2	A	04-179	28 IR 237	135 IAC 2-7-11	A	05-257	29 IR 609
68 IAC 15-6-2	A	04-179	28 IR 238	135 IAC 2-7-12	A	05-257	29 IR 609
68 IAC 15-6-3	A	04-179	28 IR 239	135 IAC 2-7-13	A	05-257	29 IR 610
68 IAC 15-6-5	A	04-179	28 IR 240	135 IAC 2-7-14	A	05-257	29 IR 610
68 IAC 15-9-4	A	04-102	27 IR 3112	135 IAC 2-7-15	A	05-257	29 IR 610
68 IAC 15-10-4.1	A	04-102	27 IR 3113	135 IAC 2-7-16	A	05-257	29 IR 610
68 IAC 15-13-2.5	N	04-102	27 IR 3113	135 IAC 2-7-17	A	05-257	29 IR 610
68 IAC 16-1-16	A	04-102	27 IR 3113	135 IAC 2-7-18	A	05-257	29 IR 610
68 IAC 17-1-5	A	04-102	27 IR 3114	135 IAC 2-7-19	A	05-257	29 IR 611
68 IAC 17-2-6	A	04-102	27 IR 3114	135 IAC 2-7-20	A	05-257	29 IR 611
68 IAC 18-1-2	A	04-102	27 IR 3114	135 IAC 2-7-21	A	05-257	29 IR 611
68 IAC 18-1-6	A	04-102	27 IR 3114	135 IAC 2-7-22	A	05-257	29 IR 612
TITLE 71 INDIANA HORSE RACING COMMISSION				135 IAC 2-7-23	A	05-257	29 IR 612
71 IAC 1-1-1.5	N	05-246	*ER (29 IR 829)	135 IAC 2-7-24	A	05-257	29 IR 612
71 IAC 1-1-75.5	N	05-246	*ER (29 IR 829)	135 IAC 2-8-1	A	05-257	29 IR 612
71 IAC 1.5-1-1.5	N	05-246	*ER (29 IR 829)	135 IAC 2-8-3	A	05-257	29 IR 612
71 IAC 1.5-1-71.5	N	05-246	*ER (29 IR 829)	135 IAC 2-8-5	A	05-257	29 IR 613
71 IAC 3-2-9	A	05-115	*ER (28 IR 2745)	135 IAC 2-8-7	A	05-257	29 IR 613
71 IAC 3-3-11	A	05-115	*ER (28 IR 2746)	135 IAC 2-8-11	A	05-257	29 IR 613
71 IAC 3-4-1	A	05-115	*ER (28 IR 2746)	135 IAC 2-10-1	R	05-257	29 IR 614
71 IAC 3-7-3	R	05-115	*ER (28 IR 2751)	135 IAC 2-10-2	A	05-257	29 IR 613
71 IAC 3-11-1	A	05-115	*ER (28 IR 2746)	TITLE 140 BUREAU OF MOTOR VEHICLES			
71 IAC 5-3-1	A	05-115	*ER (28 IR 2746)	140 IAC 4-4	RA	04-162	28 IR 323
71 IAC 6-1-3	A	05-115	*ER (28 IR 2747)	140 IAC 7-4	N	05-237	29 IR 64
71 IAC 6-1-4	N	05-115	*ER (28 IR 2748)	140 IAC 8-4	RA	04-162	28 IR 323
71 IAC 7-1-29	A	05-115	*ER (28 IR 2748)	TITLE 170 INDIANA UTILITY REGULATORY COMMISSION			
71 IAC 7-3-7	A	05-115	*ER (28 IR 2749)	170 IAC 1-4	RA	04-163	27 IR 4140
71 IAC 7-3-13	A	05-115	*ER (28 IR 2750)				*CPH (28 IR 620)
							28 IR 1315
							28 IR 1315

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170 IAC 1-5	RA	04-163	27 IR 4140	*CPH (28 IR 620) 28 IR 1315	TITLE 240 STATE POLICE DEPARTMENT			
170 IAC 4-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)	240 IAC 1-4-3	A	05-287	29 IR 838
170 IAC 4-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)	240 IAC 1-4-24.1	A	05-287	29 IR 838
170 IAC 4-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)	240 IAC 1-5-5	A	05-287	29 IR 839
170 IAC 4-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)	240 IAC 8	RA	04-164	27 IR 4140
170 IAC 4-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)	TITLE 260 STATE DEPARTMENT OF TOXICOLOGY			
170 IAC 4-1-23	A	04-68	27 IR 2765	28 IR 789	260 IAC 1.1-1-1	RA	05-152	29 IR 896
170 IAC 4-1.2	N	04-144	27 IR 4057	*CPH (28 IR 620) *AWR (28 IR 2730)	260 IAC 1.1-2-2	RA	05-152	29 IR 896
170 IAC 4-4.1-7	A	05-130	28 IR 3331	28 IR 786	TITLE 280 DIVISION OF PREPAREDNESS AND TRAINING			
170 IAC 4-4.2	N	03-305	27 IR 2312		280 IAC 1-1	RA	05-300	29 IR 1381
170 IAC 4-4.2-5	A	05-130	28 IR 3332		280 IAC 1-2	RA	05-300	29 IR 1381
170 IAC 4-4.3	N	05-130	28 IR 3333		280 IAC 1-3	RA	05-300	29 IR 1381
170 IAC 5-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)	280 IAC 1-4	RA	05-300	29 IR 1381
170 IAC 5-1-16	A	05-100	28 IR 3627	28 IR 786	TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS			
170 IAC 5-1-16.5	R	04-144	27 IR 4095		305 IAC 1-2	RA	05-60	28 IR 3052
170 IAC 5-1-16.6	R	04-144	27 IR 4095		305 IAC 1-2-6	A	03-212	27 IR 216
170 IAC 5-1-17	R	04-144	27 IR 4095		305 IAC 1-3-4	A	03-212	27 IR 216
170 IAC 5-1.2	N	04-144	27 IR 4065	*CPH (28 IR 620) *AWR (28 IR 2730)	305 IAC 1-4-1	A	03-212	27 IR 217
170 IAC 6-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)	305 IAC 1-4-2	A	03-212	27 IR 217
170 IAC 6-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)	305 IAC 1-5	N	03-212	27 IR 217
170 IAC 6-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)	TITLE 312 NATURAL RESOURCES COMMISSION			
170 IAC 6-1.1	N	04-268	28 IR 1518	*CPH (28 IR 1710) 29 IR 456	312 IAC 2-4-6	A	04-215	28 IR 626
170 IAC 6-1.2	N	04-144	27 IR 4073	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 2-4-12	A	04-67	27 IR 3604
170 IAC 7-1.3-2	A	04-144	27 IR 4080	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 2-4-14	N	04-215	28 IR 626
170 IAC 7-1.3-3	A	04-144	27 IR 4081	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 3-1-7	A	04-263	28 IR 1203
170 IAC 7-1.3-8	A	04-144	27 IR 4083	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 3-1-9	A	05-57	28 IR 3003
170 IAC 7-1.3-9	A	04-144	27 IR 4084	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 4-6-6	A	04-208	28 IR 625
170 IAC 7-1.3-10	A	04-144	27 IR 4085	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 5-6-5	A	04-84	28 IR 240
170 IAC 7-6	RA	05-22	28 IR 2458	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 5-6-5.5	N	04-210	28 IR 989
170 IAC 8.5-2-1	A	04-144	27 IR 4086	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 5-7-5	A	05-263	29 IR 839
170 IAC 8.5-2-3	A	04-144	27 IR 4087	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 5-14-1	A	04-155	27 IR 4100
170 IAC 8.5-2-4	A	04-144	27 IR 4089	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 5-14-2	A	04-155	27 IR 4100
170 IAC 8.5-2-5	A	04-144	27 IR 4092	*CPH (28 IR 620) *AWR (28 IR 2730)	312 IAC 5-14-4	A	04-155	27 IR 4101
TITLE 203 VICTIM SERVICES DIVISION				28 IR 6	312 IAC 5-14-5	R	04-155	27 IR 4109
203 IAC	N	04-63	27 IR 2526		312 IAC 5-14-5.1	N	04-155	27 IR 4101
TITLE 207 CORONERS TRAINING BOARD					312 IAC 5-14-6	R	04-155	27 IR 4109
207 IAC 2	N	04-231	28 IR 624	*ARR (28 IR 2392)	312 IAC 5-14-6.1	N	04-155	27 IR 4102
					312 IAC 5-14-7	A	04-155	27 IR 4102
					312 IAC 5-14-8	A	04-155	27 IR 4102
					312 IAC 5-14-9	A	04-155	27 IR 4103
					312 IAC 5-14-11	A	04-155	27 IR 4103
					312 IAC 5-14-15	A	04-155	27 IR 4103
					312 IAC 5-14-16	A	04-155	27 IR 4104
					312 IAC 5-14-17	A	04-155	27 IR 4104
					312 IAC 5-14-18	A	04-155	27 IR 4105
					312 IAC 5-14-19	A	04-155	27 IR 4105
					312 IAC 5-14-20	A	04-155	27 IR 4106
					312 IAC 5-14-21	A	04-155	27 IR 4106
					312 IAC 5-14-22	A	04-155	27 IR 4106
					312 IAC 5-14-24	A	04-155	27 IR 4107
					312 IAC 5-14-25	A	04-155	27 IR 4108
					312 IAC 5-14-26	R	04-155	27 IR 4109
					312 IAC 5-14-27	N	04-155	27 IR 4109
					312 IAC 6.2	N	04-66	27 IR 3119
					312 IAC 6.5	N	04-3	27 IR 2767
					312 IAC 8	RA	03-315	27 IR 2339
					312 IAC 8-1-4	A	05-18	28 IR 2412
					312 IAC 8-2-3	A	05-18	28 IR 2413

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312 IAC 8-2-8	A	05-18	28 IR 2414	29 IR 463	312 IAC 11-2-14.5	N	05-38	28 IR 2768	29 IR 464
312 IAC 9-1-9.5	N	03-311	27 IR 1946	28 IR 536	312 IAC 11-2-20	A	05-38	28 IR 2768	29 IR 465
312 IAC 9-1-11.5	N	03-311	27 IR 1946	28 IR 536	312 IAC 11-2-24	A	05-38	28 IR 2768	29 IR 465
312 IAC 9-2-1	A	05-214	29 IR 618		312 IAC 11-2-25.2	N	05-38	28 IR 2768	29 IR 465
312 IAC 9-2-14	N	04-253	28 IR 1522		312 IAC 11-2-27.5	N	05-38	28 IR 2769	29 IR 465
	N	05-214	29 IR 618		312 IAC 11-3-1	A	04-94	27 IR 4095	28 IR 1681
312 IAC 9-2-15	N	04-253	28 IR 1522		312 IAC 11-3-3	A	05-38	28 IR 2769	29 IR 465
312 IAC 9-3-2	A	03-311	27 IR 1946	28 IR 536	312 IAC 11-4-2	A	05-38	28 IR 2770	29 IR 466
	A	05-214	29 IR 619		312 IAC 11-4-3	A	05-38	28 IR 2770	29 IR 467
312 IAC 9-3-2.5	N	05-262	29 IR 1250		312 IAC 11-4-4	A	05-38	28 IR 2771	29 IR 467
312 IAC 9-3-3	A	03-311	27 IR 1947	28 IR 538	312 IAC 11-5-2	A	05-274	29 IR 1251	
	A	05-214	29 IR 620		312 IAC 11-5-3	N	05-38	28 IR 2771	29 IR 468
312 IAC 9-3-4	A	03-311	27 IR 1948	28 IR 538	312 IAC 12	RA	05-1	28 IR 2203	28 IR 3661
	A	04-253	28 IR 1523	28 IR 2945	312 IAC 13	RA	05-1	28 IR 2203	28 IR 3661
312 IAC 9-3-5	A	04-253	28 IR 1523	28 IR 2945	312 IAC 16	RA	03-315	27 IR 2339	28 IR 1315
312 IAC 9-3-10	A	03-311	27 IR 1949	28 IR 539	312 IAC 16-3-2	A	04-121	27 IR 4097	28 IR 1682
312 IAC 9-3-11	A	03-311	27 IR 1949	28 IR 539	312 IAC 16-3-8	A	04-121	27 IR 4099	28 IR 1684
312 IAC 9-3-12	A	03-311	27 IR 1949	28 IR 539	312 IAC 16-5-14	A	04-23	27 IR 2532	28 IR 556
	A	05-214	29 IR 621		312 IAC 16-5-19	A	05-14	28 IR 2410	29 IR 458
312 IAC 9-3-13	A	03-311	27 IR 1950	28 IR 540	312 IAC 17	RA	03-315	27 IR 2339	28 IR 1315
312 IAC 9-3-14	A	03-311	27 IR 1950	28 IR 540	312 IAC 17-3	R	05-99	28 IR 3632	
312 IAC 9-3-15	A	03-311	27 IR 1950	28 IR 540	312 IAC 17-3-1	A	04-23	27 IR 2532	28 IR 557
312 IAC 9-3-17	A	03-311	27 IR 1950	28 IR 540	312 IAC 17-3-2	A	04-23	27 IR 2532	28 IR 557
312 IAC 9-3-18.1	N	05-214	29 IR 621		312 IAC 17-3-3	A	04-23	27 IR 2532	28 IR 557
312 IAC 9-3-18.2	N	05-214	29 IR 621		312 IAC 17-3-4	A	04-23	27 IR 2533	28 IR 558
312 IAC 9-3-18.3	N	05-214	29 IR 621		312 IAC 17-3-6	A	04-23	27 IR 2534	28 IR 558
312 IAC 9-3-18.4	N	05-214	29 IR 621		312 IAC 17-3-8	A	04-23	27 IR 2534	28 IR 558
312 IAC 9-3-19	A	05-214	29 IR 622		312 IAC 17-3-9	A	04-23	27 IR 2534	28 IR 558
312 IAC 9-4-2	A	05-214	29 IR 622		312 IAC 18-3-12	A	04-270	28 IR 1203	*GRAT (28 IR 3053)
312 IAC 9-4-5.5	N	05-214	29 IR 622						28 IR 2951
312 IAC 9-4-7	R	03-311	27 IR 1966	28 IR 556		A	05-213	29 IR 614	
312 IAC 9-4-10	A	03-311	27 IR 1951		312 IAC 18-3-18	N	04-177	28 IR 1201	28 IR 2942
312 IAC 9-4-11	A	03-311	27 IR 1951	28 IR 541	312 IAC 18-3-19	N	04-127	28 IR 1521	28 IR 2942
	A	04-253	28 IR 1524	28 IR 2946	312 IAC 19	RA	03-315	27 IR 2339	28 IR 1315
	A	05-214	29 IR 623		312 IAC 23	RA	05-1	28 IR 2203	28 IR 3661
312 IAC 9-4-14	A	03-311	27 IR 1952	28 IR 542	312 IAC 25-4-102				*ERR (28 IR 214)
312 IAC 9-5-4	A	03-311	27 IR 1953	28 IR 542	312 IAC 25-4-114				*ERR (28 IR 214)
	A	04-253	28 IR 1526	28 IR 2947	312 IAC 25-5-16				*ERR (28 IR 214)
312 IAC 9-5-6	A	03-311	27 IR 1953	28 IR 543	312 IAC 25-6-20				*ERR (28 IR 214)
312 IAC 9-5-7	A	03-311	27 IR 1953	28 IR 543	312 IAC 25-7-1				*ERR (28 IR 214)
	A	04-253	28 IR 1526	28 IR 2948	312 IAC 26	RA	03-315	27 IR 2339	28 IR 1315
312 IAC 9-5-9	A	03-311	27 IR 1955	28 IR 545					
	A	04-253	28 IR 1528	28 IR 2950	TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION				
312 IAC 9-5-11	N	03-311	27 IR 1956	28 IR 546	315 IAC 1	RA	04-71	27 IR 2879	28 IR 323
	A	05-214	29 IR 624		315 IAC 1-2-1	A	04-70	28 IR 990	*CPH (28 IR 1498)
312 IAC 9-6-9	A	03-311	27 IR 1957	28 IR 547					*SPE
312 IAC 9-7-2	A	03-311	27 IR 1957	28 IR 547		A	05-73	28 IR 2772	29 IR 469
312 IAC 9-7-6	A	03-311	27 IR 1959	28 IR 549	315 IAC 1-3-1	A	04-70	28 IR 991	*CPH (28 IR 1498)
312 IAC 9-7-13	A	03-311	27 IR 1960	28 IR 550					*SPE
312 IAC 9-10-5	A	05-214	29 IR 626			A	05-73	28 IR 2773	29 IR 469
312 IAC 9-10-9	A	03-311	27 IR 1960	28 IR 550	315 IAC 1-3-2	A	04-70	28 IR 991	*CPH (28 IR 1498)
312 IAC 9-10-9.5	N	03-311	27 IR 1961	28 IR 551					*SPE
312 IAC 9-10-10	A	03-311	27 IR 1962	28 IR 552		A	05-73	28 IR 2774	29 IR 470
312 IAC 9-10-11	A	05-214	29 IR 626		315 IAC 1-3-2.1	N	04-70	28 IR 992	*CPH (28 IR 1498)
312 IAC 9-10-12	A	05-214	29 IR 628						*SPE
312 IAC 9-10-13.5	N	03-311	27 IR 1963	28 IR 553		N	05-73	28 IR 2775	29 IR 471
312 IAC 9-10-17	A	03-311	27 IR 1964	28 IR 554	315 IAC 1-3-3	A	04-70	28 IR 992	*CPH (28 IR 1498)
312 IAC 9-11-1	A	03-311	27 IR 1964	28 IR 554					*SPE
312 IAC 9-11-2	A	03-311	27 IR 1965	28 IR 555		A	05-73	28 IR 2775	29 IR 471
312 IAC 9-11-13	A	05-214	29 IR 628		315 IAC 1-3-4	A	04-70	28 IR 993	*CPH (28 IR 1498)
312 IAC 9-11-14	A	03-311	27 IR 1965	28 IR 555					*SPE
312 IAC 11	RA	05-1	28 IR 2203	28 IR 3661		A	05-73	28 IR 2776	29 IR 472
312 IAC 11-2-2	A	05-38	28 IR 2767	29 IR 464	315 IAC 1-3-5	A	04-70	28 IR 994	*CPH (28 IR 1498)
312 IAC 11-2-5	A	04-157	28 IR 1521	28 IR 2660					*SPE
312 IAC 11-2-7	A	05-38	28 IR 2767	29 IR 464		A	05-73	28 IR 2776	29 IR 473
312 IAC 11-2-11	A	05-38	28 IR 2768	29 IR 464	315 IAC 1-3-7	A	04-70	28 IR 994	*CPH (28 IR 1498)
312 IAC 11-2-11.5	N	04-94	27 IR 4095	28 IR 1681					*SPE
312 IAC 11-2-11.8	N	05-38	28 IR 2768	29 IR 464		A	05-73	28 IR 2777	29 IR 473

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315 IAC 1-3-8	A	04-70	28 IR 994	*CPH (28 IR 1498) *SPE	326 IAC 2-6.1-3	RA	04-44	27 IR 3149	28 IR 795
	A	05-73	28 IR 2777	29 IR 474	326 IAC 2-6.1-4	RA	04-44	27 IR 3150	28 IR 796
315 IAC 1-3-9	A	04-70	28 IR 995	*CPH (28 IR 1498) *SPE	326 IAC 2-6.1-5	RA	04-44	27 IR 3150	28 IR 796
	A	05-73	28 IR 2778	29 IR 474	326 IAC 2-6.1-6	RA	04-44	27 IR 3151	28 IR 797
315 IAC 1-3-10	A	04-70	28 IR 995	*CPH (28 IR 1498) *SPE	326 IAC 2-6.1-7	RA	04-44	27 IR 3154	28 IR 801
	A	05-73	28 IR 2778	29 IR 475	326 IAC 2-7-3	A	02-337	26 IR 2006	*ARR (27 IR 2500)
315 IAC 1-3-12	A	04-70	28 IR 996	*CPH (28 IR 1498) *SPE	326 IAC 2-7-8	A	02-337	26 IR 2006	*CPH (27 IR 2521)
	A	05-73	28 IR 2778	29 IR 475					28 IR 20
315 IAC 1-3-14	A	04-70	28 IR 996	*CPH (28 IR 1498) *SPE	326 IAC 2-7-18	A	02-337	26 IR 2007	*ARR (27 IR 2500)
	A	05-73	28 IR 2778	29 IR 475					*CPH (27 IR 2521)
315 IAC 1-3-15	A	04-70	28 IR 996	*CPH (28 IR 1498) *SPE	326 IAC 2-8-3	A	02-337	26 IR 2008	28 IR 20
	A	05-73	28 IR 2779	29 IR 475					*ARR (27 IR 2500)
	N	04-70	28 IR 996	*CPH (28 IR 1498) *SPE					*CPH (27 IR 2521)
	N	05-73	28 IR 2779	29 IR 476					28 IR 21
TITLE 326 AIR POLLUTION CONTROL BOARD					326 IAC 2-9-1	RA	04-44	27 IR 3155	28 IR 22
326 IAC 1-1-3	A	02-337	26 IR 1997	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 2-9-2.5	RA	04-44	27 IR 3156	28 IR 801
				28 IR 17	326 IAC 2-9-3	RA	04-44	27 IR 3156	28 IR 802
	A	04-299	28 IR 1815	*CPH (28 IR 2406) *SPE	326 IAC 2-9-4	RA	04-44	27 IR 3157	28 IR 803
				29 IR 795	326 IAC 2-9-5	RA	04-44	27 IR 3158	28 IR 803
326 IAC 1-1-3.5	A	05-230	29 IR 632	*ARR (27 IR 2500)	326 IAC 2-9-6	RA	04-44	27 IR 3159	28 IR 805
	A	02-337	26 IR 1997	*CPH (27 IR 2521)	326 IAC 2-9-7	A	02-337	26 IR 2009	*ARR (27 IR 2500)
				28 IR 18					*CPH (27 IR 2521)
	A	04-299	28 IR 1815	*CPH (28 IR 2406) *SPE	326 IAC 2-9-8	RA	04-44	27 IR 3159	28 IR 23
				29 IR 795		A	02-337	26 IR 2010	28 IR 805
326 IAC 1-1-6	N	04-180	28 IR 248	*GRAT (28 IR 2205)	326 IAC 2-9-9	RA	04-44	27 IR 3160	*ARR (27 IR 2500)
				28 IR 2046		A	02-337	26 IR 2012	*CPH (27 IR 2521)
326 IAC 1-2-33.5	A	05-79	28 IR 3005	29 IR 795					28 IR 25
326 IAC 1-2-48	A	05-79	28 IR 3005	29 IR 796					28 IR 806
326 IAC 1-2-52	A	03-228	27 IR 3120	28 IR 1471	326 IAC 2-9-10	RA	04-44	27 IR 3162	*ARR (27 IR 2500)
326 IAC 1-2-52.2	N	03-228	27 IR 3121	28 IR 1471		A	02-337	26 IR 2013	*CPH (27 IR 2521)
326 IAC 1-2-52.4	N	03-228	27 IR 3121	28 IR 1471					28 IR 26
326 IAC 1-2-65	A	02-337	26 IR 1997	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 2-9-11	RA	04-44	27 IR 3163	28 IR 808
				28 IR 18	326 IAC 2-9-12	RA	04-44	27 IR 3164	*ARR (27 IR 2500)
326 IAC 1-2-82.5	N	03-228	27 IR 3121	28 IR 1471	326 IAC 2-9-13	RA	04-44	27 IR 3165	*CPH (27 IR 2521)
326 IAC 1-2-90	A	02-337	26 IR 1998	*ARR (27 IR 2500) *CPH (27 IR 2521)		A	02-337	26 IR 2014	28 IR 27
				28 IR 18					28 IR 809
	A	05-79	28 IR 3006	29 IR 796	326 IAC 2-9-14	RA	04-44	27 IR 3165	28 IR 810
326 IAC 1-3-4	A	03-228	27 IR 3121	28 IR 1471	326 IAC 3-4-1	RA	04-44	27 IR 3167	28 IR 811
	A	05-235	29 IR 633			A	02-337	26 IR 2016	28 IR 814
326 IAC 1-4-1	A	04-148	27 IR 3606	28 IR 1182					*ARR (27 IR 2500)
326 IAC 2-2-13	A	02-337	26 IR 1998	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 3-4-3	A	02-337	26 IR 2016	*CPH (27 IR 2521)
				28 IR 19					28 IR 30
326 IAC 2-2-16	A	02-337	26 IR 1999	*ARR (27 IR 2500) *CPH (27 IR 2521)	326 IAC 3-5-2	A	02-337	26 IR 2017	*ARR (27 IR 2500)
				28 IR 20					*CPH (27 IR 2521)
326 IAC 2-5.1-1	RA	04-44	27 IR 3144	28 IR 791	326 IAC 3-5-3	A	02-337	26 IR 2019	28 IR 31
326 IAC 2-5.1-2	RA	04-44	27 IR 3145	28 IR 791					28 IR 32
326 IAC 2-5.5-1	RA	04-44	27 IR 3146	28 IR 792					*ARR (27 IR 2500)
326 IAC 2-5.5-2	RA	04-44	27 IR 3146	28 IR 793	326 IAC 3-5-4	A	02-337	26 IR 2019	*CPH (27 IR 2521)
326 IAC 2-5.5-3	RA	04-44	27 IR 3146	28 IR 793					28 IR 33
326 IAC 2-5.5-4	RA	04-44	27 IR 3147	28 IR 793					*ARR (27 IR 2500)
326 IAC 2-5.5-5	RA	04-44	27 IR 3147	28 IR 794	326 IAC 3-5-5	A	02-337	26 IR 2020	*CPH (27 IR 2521)
326 IAC 2-5.5-6	RA	04-44	27 IR 3147	28 IR 794					28 IR 34
326 IAC 2-6-1	A	05-78	29 IR 1255		326 IAC 3-6-1	A	02-337	26 IR 2022	*ARR (27 IR 2500)
326 IAC 2-6-3	A	05-78	29 IR 1256						*CPH (27 IR 2521)
326 IAC 2-6-4	A	05-78	29 IR 1257						28 IR 34
326 IAC 2-6.1-1	RA	04-44	27 IR 3149	28 IR 795					*ARR (27 IR 2500)
326 IAC 2-6.1-2	RA	04-44	27 IR 3149	28 IR 795					*CPH (27 IR 2521)
									28 IR 36

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326 IAC 3-6-3	A	02-337	26 IR 2022	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 37	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 3-6-5	A	02-337	26 IR 2023	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 37	326 IAC 7-4-3 326 IAC 7-4-10	A	03-195 02-337	27 IR 2319 26 IR 2029	28 IR 117 *ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 43
326 IAC 3-7-2	A	02-337	26 IR 2024	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 38	326 IAC 7-4-13	A	03-282	27 IR 2768	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2021
326 IAC 3-7-4	A	02-337	26 IR 2025	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 40	326 IAC 7-4.1	N	00-236	28 IR 633	*CPH (28 IR 982) *CPH (28 IR 1710) 28 IR 2954
326 IAC 3-8	N	04-182	29 IR 1254		326 IAC 8-1-4	A	02-337	26 IR 2030	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 44
326 IAC 5-1-2	A	02-337	26 IR 2026	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 40	326 IAC 8-1-6 326 IAC 8-4-6	A	05-166 02-337	29 IR 1259 26 IR 2032	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 47
326 IAC 5-1-4	A	02-337	26 IR 2026	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 41	326 IAC 8-4-9	A	02-337	26 IR 2035	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 49
326 IAC 5-1-5	A	02-337	26 IR 2027	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 41	326 IAC 8-7-7	A	02-337	26 IR 2036	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 51
326 IAC 6-1-1	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-9-2	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 51
326 IAC 6-1-1.5	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-9-3	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 51
326 IAC 6-1-2	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-9-4	A	02-337	26 IR 2038	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 51
326 IAC 6-1-3	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-9-5	A	02-337	26 IR 2040	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 52
326 IAC 6-1-4	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-9-6	A	02-337	26 IR 2042	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 56
326 IAC 6-1-5	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-10-7	A	02-337	26 IR 2044	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 58
326 IAC 6-1-6	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-11-2	A	02-337	26 IR 2044	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 59
326 IAC 6-1-7	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-11-6	A	02-337	26 IR 2046	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 61
326 IAC 6-1-8.1	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-11-7	A	02-337	26 IR 2050	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 64
326 IAC 6-1-9	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-12-3	A	02-337	26 IR 2050	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 65
326 IAC 6-1-10.1	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-12-5	A	02-337	26 IR 2052	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 67
326 IAC 6-1-10.2	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-12-6	A	02-337	26 IR 2053	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 68
326 IAC 6-1-11.1	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-12-7	A	02-337	26 IR 2054	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 68
326 IAC 6-1-11.2	R	02-335	28 IR 1813	28 IR 3550	326 IAC 8-13-5	A	02-337	26 IR 2055	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 69
326 IAC 6-1-12	A	04-43	28 IR 242	*GRAT (28 IR 2204) 28 IR 2037 *ERR (28 IR 2137) 28 IR 3550					
	R	02-335	28 IR 1813	28 IR 115					
326 IAC 6-1-13	A	03-195	27 IR 2318	28 IR 3550					
	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) 28 IR 3454					
326 IAC 6.5	N	02-335	28 IR 1714	*ERR (29 IR 548) *CPH (28 IR 2406) 29 IR 476					
326 IAC 6.5-7-13	A	04-234	28 IR 1814	28 IR 3503 29 IR 794					
326 IAC 6.8	N	02-335	28 IR 1766	*CPH (28 IR 982) *CPH (28 IR 1710) 28 IR 2953					
326 IAC 6.8-2-4	A	04-278	28 IR 3004	*CPH (28 IR 982) *CPH (28 IR 1710) 28 IR 2953					
326 IAC 7-1.1-1	A	00-236	28 IR 632	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 42					
326 IAC 7-1.1-2	A	00-236	28 IR 632	*ARR (27 IR 2500) *CPH (27 IR 2521) 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					

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326 IAC 10-1-2	A	02-337	26 IR 2056	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 70	326 IAC 14-8-3	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 83
326 IAC 10-1-4	A	02-337	26 IR 2057	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 71	326 IAC 14-8-4	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 84
326 IAC 10-1-5	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 73	326 IAC 14-8-5	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 84
326 IAC 10-1-6	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 74	326 IAC 14-9-5	A	02-337	26 IR 2070	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 84
326 IAC 10-3-3	A	04-200	28 IR 2781		326 IAC 14-9-8	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 85
326 IAC 10-4-1	A	04-200	28 IR 2782						
326 IAC 10-4-2	A	04-200	28 IR 2783		326 IAC 14-9-9	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 86
326 IAC 10-4-3	A	04-200	28 IR 2790						
326 IAC 10-4-9	A	04-200	28 IR 2791		326 IAC 14-10-1	A	02-337	26 IR 2072	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 87
326 IAC 10-4-13	A	04-200	28 IR 2797						
326 IAC 10-4-14	A	04-200	28 IR 2801		326 IAC 14-10-2	A	02-337	26 IR 2074	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 88
326 IAC 10-4-15	A	04-200	28 IR 2801		326 IAC 14-10-3	A	02-337	26 IR 2076	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 91
326 IAC 10-5	N	04-200	28 IR 2803		326 IAC 14-10-4	A	02-337	26 IR 2078	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 93
326 IAC 11-3-4	A	02-337	26 IR 2060	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 74	326 IAC 15-1-2	A	02-337	26 IR 2080	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 95
326 IAC 11-7-1	A	02-337	26 IR 2061	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 75	326 IAC 15-1-4	A	02-337	26 IR 2083	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 98
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 16-3-1	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 98
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 18-1-1	A	03-283	27 IR 3128	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2022
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 18-1-2	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 99
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 18-1-3	A	03-283	27 IR 3130	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2024
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 18-1-4	A	03-283	27 IR 3131	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2025
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 18-1-5	A	02-337	26 IR 2086	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 101
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 18-1-6	A	03-283	27 IR 3132	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2026
326 IAC 14-1-4	R	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 114	326 IAC 18-1-7	A	02-337	26 IR 2087	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 102
326 IAC 14-3-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 82	326 IAC 18-1-8	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 103
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					

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326 IAC 18-1-9	A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2028	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 18-2-2	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 103	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
	A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2028	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 18-2-3	A	02-337	26 IR 2090	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 104	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
	A	03-283	27 IR 3136	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2030	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 18-2-6	A	02-337	26 IR 2096	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 111					
326 IAC 18-2-7	A	02-337	26 IR 2097	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 112	326 IAC 20-82	N	04-235	28 IR 997	28 IR 2966
326 IAC 19-2-1	A	05-80	28 IR 3007	29 IR 797	326 IAC 20-83	N	04-236	28 IR 998	28 IR 2967
326 IAC 20-25-1	A	03-264	27 IR 3123	*CPH (27 IR 3590) *GRAT (28 IR 2204) 28 IR 2017	326 IAC 20-84	N	04-236	28 IR 998	28 IR 2967
					326 IAC 20-85	N	04-236	28 IR 999	28 IR 2967
326 IAC 20-25-2	A	03-264	27 IR 3124	*CPH (27 IR 3590) *GRAT (28 IR 2204) 28 IR 2018	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 20-29	N	05-236	29 IR 635		326 IAC 20-88	N	04-236	28 IR 999	28 IR 2968
326 IAC 20-56	N	03-264	27 IR 3126	*CPH (27 IR 3590) *GRAT (28 IR 2204) 28 IR 2020	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 20-57	N	03-284	27 IR 1618	*CPH (27 IR 1937) 28 IR 119	326 IAC 20-92	N	04-300	28 IR 1817	28 IR 3550
326 IAC 20-58	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 119	326 IAC 20-93	N	04-300	28 IR 1817	28 IR 3551
326 IAC 20-59	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 119	326 IAC 20-94	N	04-300	28 IR 1817	28 IR 3551
326 IAC 20-60	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 119	326 IAC 22-1-1	A	02-337	26 IR 2098	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 113
326 IAC 20-61	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 120	326 IAC 23-1-31	A	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 114
326 IAC 20-62	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 120	TITLE 327 WATER POLLUTION CONTROL BOARD				
326 IAC 20-63	N	03-285	27 IR 2322	28 IR 121	327 IAC 1-1-1	A	03-129	27 IR 3608	*GRAT (28 IR 2205) 28 IR 2046
326 IAC 20-64	N	03-285	27 IR 2322	28 IR 121	327 IAC 1-1-2	A	03-129	27 IR 3608	*GRAT (28 IR 2205) 28 IR 2046
326 IAC 20-65	N	03-285	27 IR 2322	28 IR 121	327 IAC 1-1-3	A	03-129	27 IR 3608	*GRAT (28 IR 2205) 28 IR 2046
326 IAC 20-66	N	03-285	27 IR 2323	28 IR 122	327 IAC 2-1-5	A	03-129	27 IR 3608	*GRAT (28 IR 2205) 28 IR 2047
326 IAC 20-67	N	03-285	27 IR 2323	28 IR 122	327 IAC 2-1-6	A	03-129	27 IR 3609	*GRAT (28 IR 2205) 28 IR 2047
326 IAC 20-68	N	03-285	27 IR 2323	28 IR 122	327 IAC 2-1-8	A	03-129	27 IR 3617	*GRAT (28 IR 2205) 28 IR 2055
326 IAC 20-69	N	03-285	27 IR 2323	28 IR 122	327 IAC 2-1-8.1	A	03-129	27 IR 3617	*GRAT (28 IR 2205) 28 IR 2055
326 IAC 20-70	N	03-284	27 IR 1620	*CPH (27 IR 1937) 28 IR 120	327 IAC 2-1-8.2	A	03-129	27 IR 3618	*GRAT (28 IR 2205) 28 IR 2056
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	327 IAC 2-1-8.3	A	03-129	27 IR 3620	*GRAT (28 IR 2205) 28 IR 2057
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	327 IAC 2-1-8.9	N	03-129	27 IR 3621	*GRAT (28 IR 2205) 28 IR 2058
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	327 IAC 2-1-9	A	03-129	27 IR 3622	*ERR (28 IR 3582) *GRAT (28 IR 2205) 28 IR 2060
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	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

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327 IAC 2-1.5-6	A	03-129	27 IR 3637	*GRAT (28 IR 2205) 28 IR 2074	327 IAC 8-2-46 327 IAC 8-2.1-3	A	04-13	28 IR 1242 28 IR 1244	28 IR 3220 28 IR 3223
327 IAC 2-1.5-8	A	03-129	27 IR 3638	*GRAT (28 IR 2205) 28 IR 2074					*ERR (28 IR 3583) 28 IR 3226
327 IAC 2-1.5-10	A	03-129	27 IR 3650	*GRAT (28 IR 2205) 28 IR 2084	327 IAC 8-2.1-4 327 IAC 8-2.1-6	A	04-13	28 IR 1247 28 IR 1248	28 IR 3227
327 IAC 2-1.5-11	A	03-129	27 IR 3651	*GRAT (28 IR 2205) 28 IR 2084	327 IAC 8-2.1-8 327 IAC 8-2.1-9	A	04-13	28 IR 1255 28 IR 1256	28 IR 3233 28 IR 3234
327 IAC 2-1.5-16	A	03-129	27 IR 3660	*GRAT (28 IR 2205) 28 IR 2093	327 IAC 8-2.1-14 327 IAC 8-2.1-16	A	04-13	28 IR 1257 28 IR 1257	28 IR 3235 28 IR 3236
				*ERR (28 IR 3582)					*ERR (28 IR 3583) 28 IR 3240
327 IAC 2-1.5-20	A	03-129	27 IR 3662	*GRAT (28 IR 2205) 28 IR 2096	327 IAC 8-2.1-17 327 IAC 8-2.6-1	A	04-13	28 IR 1261 28 IR 1268	28 IR 3247 *ERR (29 IR 30)
327 IAC 2-4-3	A	03-129	27 IR 3663	*GRAT (28 IR 2205) 28 IR 2097	327 IAC 8-2.6-2	A	04-13	28 IR 1269	28 IR 3248 *ERR (28 IR 3583) 28 IR 3250
327 IAC 3-2-1.5	N	04-320	28 IR 2192	28 IR 3551	327 IAC 8-2.6-2.1	N	04-13	28 IR 1271	*ERR (28 IR 3583) 28 IR 3252
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 8-2.6-3	A	04-13	28 IR 1273	28 IR 3252
327 IAC 5-1.5-72	A	03-129	27 IR 3663	*GRAT (28 IR 2205) 28 IR 2097	327 IAC 8-2.6-4 327 IAC 8-2.6-5	A	04-13	28 IR 1274 28 IR 1274	28 IR 3253 28 IR 3253
327 IAC 5-2-1.5	A	03-129	27 IR 3663	*GRAT (28 IR 2205) 28 IR 2097	327 IAC 8-3-1 327 IAC 8-3-1.1	A	04-106	28 IR 2165 28 IR 2166	*ARR (29 IR 31) *ARR (29 IR 31)
327 IAC 5-2-11.1	A	03-129	27 IR 3664	*GRAT (28 IR 2205) 28 IR 2097	327 IAC 8-3-2 327 IAC 8-3-2.1	A	04-106	28 IR 2166 28 IR 2167	*ARR (29 IR 31) *ARR (29 IR 31)
327 IAC 5-2-11.2	A	03-129	27 IR 3668	*GRAT (28 IR 2205) 28 IR 2101	327 IAC 8-3-3 327 IAC 8-3-8	A	04-106	28 IR 2168 28 IR 2168	*ARR (29 IR 31) *ARR (29 IR 31)
327 IAC 5-2-11.4	A	03-129	27 IR 3669	*GRAT (28 IR 2205) 28 IR 2102	327 IAC 8-3.1-1 327 IAC 8-3.1-2	A	04-106	28 IR 2169 28 IR 2169	*ARR (29 IR 31) *ARR (29 IR 31)
				*ERR (28 IR 3582)	327 IAC 8-3.2-1	A	04-106	28 IR 2170	*ARR (29 IR 31)
327 IAC 5-2-11.5	A	03-129	27 IR 3679	*GRAT (28 IR 2205) 28 IR 2112	327 IAC 8-3.2-2 327 IAC 8-3.2-4	A	04-106	28 IR 2170 28 IR 2171	*ARR (29 IR 31) *ARR (29 IR 31)
327 IAC 5-2-11.6	A	03-129	27 IR 3689	*GRAT (28 IR 2205) 28 IR 2120	327 IAC 8-3.2-8 327 IAC 8-3.2-11	A	04-106	28 IR 2171 28 IR 2173	*ARR (29 IR 31) *ARR (29 IR 31)
327 IAC 5-2-13	A	03-129	27 IR 3694	*GRAT (28 IR 2205) 28 IR 2125	327 IAC 8-3.2-17 327 IAC 8-3.2-18	A	04-106	28 IR 2173 28 IR 2174	*ARR (29 IR 31) *ARR (29 IR 31)
327 IAC 5-2-15	A	03-129	27 IR 3694	*GRAT (28 IR 2205) 28 IR 2126	327 IAC 8-3.2-20 327 IAC 8-3.3-4	A	04-106	28 IR 2175 28 IR 2175	*ARR (29 IR 31) *ARR (29 IR 31)
327 IAC 5-3.5	N	03-130	28 IR 650	*CPH (28 IR 1197) 28 IR 2349	327 IAC 8-3.3-5 327 IAC 8-3.3-6	A	04-106	28 IR 2176 28 IR 2176	*ARR (29 IR 31) *ARR (29 IR 31)
				*ERR (28 IR 3582)	327 IAC 8-3.4-1	A	04-106	28 IR 2176	*ARR (29 IR 31)
327 IAC 8-1-1	A	04-106	28 IR 2163	*ARR (29 IR 31)	327 IAC 8-3.4-2	A	04-106	28 IR 2178	*ARR (29 IR 31)
327 IAC 8-1-2	A	04-106	28 IR 2164	*ARR (29 IR 31)	327 IAC 8-3.4-3	A	04-106	28 IR 2178	*ARR (29 IR 31)
327 IAC 8-1-3	A	04-106	28 IR 2164	*ARR (29 IR 31)	327 IAC 8-3.4-4	A	04-106	28 IR 2179	*ARR (29 IR 31)
327 IAC 8-1-4	A	04-106	28 IR 2165	*ARR (29 IR 31)	327 IAC 8-3.4-8	A	04-106	28 IR 2180	*ARR (29 IR 31)
327 IAC 8-2-1	A	04-13	28 IR 1206	28 IR 3184	327 IAC 8-3.4-9	A	04-106	28 IR 2180	*ARR (29 IR 31)
327 IAC 8-2-4	A	04-13	28 IR 1210	28 IR 3188	327 IAC 8-3.4-9.1	N	04-106	28 IR 2182	*ARR (29 IR 31)
327 IAC 8-2-4.1	A	04-13	28 IR 1212	28 IR 3190	327 IAC 8-3.4-12	A	04-106	28 IR 2183	*ARR (29 IR 31)
327 IAC 8-2-4.2	A	04-13	28 IR 1217	28 IR 3196	327 IAC 8-3.4-13	A	04-106	28 IR 2183	*ARR (29 IR 31)
				*ERR (28 IR 3582)	327 IAC 8-3.4-14	A	04-106	28 IR 2183	*ARR (29 IR 31)
				*ERR (29 IR 30)	327 IAC 8-3.4-16	A	04-106	28 IR 2184	*ARR (29 IR 31)
327 IAC 8-2-5.1	A	04-13	28 IR 1220	28 IR 3198	327 IAC 8-3.4-17	A	04-106	28 IR 2185	*ARR (29 IR 31)
327 IAC 8-2-5.2	A	04-13	28 IR 1222	28 IR 3200	327 IAC 8-3.4-23	A	04-106	28 IR 2185	*ARR (29 IR 31)
				*ERR (28 IR 3582)	327 IAC 8-3.4-24	A	04-106	28 IR 2186	*ARR (29 IR 31)
327 IAC 8-2-5.5	A	04-13	28 IR 1225	28 IR 3203	327 IAC 8-3.4-25	A	04-106	28 IR 2187	*ARR (29 IR 31)
				*ERR (28 IR 3582)	327 IAC 8-3.4-27	A	04-106	28 IR 2188	*ARR (29 IR 31)
327 IAC 8-2-8.5	A	04-13	28 IR 1228	28 IR 3206	327 IAC 8-3.5-1	A	04-106	28 IR 2188	*ARR (29 IR 31)
327 IAC 8-2-8.7	A	04-13	28 IR 1229	28 IR 3207	327 IAC 8-3.5-2	A	04-106	28 IR 2189	*ARR (29 IR 31)
				*ERR (28 IR 3582)	327 IAC 8-3.5-5	A	04-106	28 IR 2189	*ARR (29 IR 31)
327 IAC 8-2-9	A	04-13	28 IR 1230	28 IR 3209	327 IAC 8-4-1	A	04-106	28 IR 2190	*ARR (29 IR 31)
327 IAC 8-2-10.1	A	04-13	28 IR 1230	28 IR 3209	327 IAC 8-4-2	N	04-106	28 IR 2191	*ARR (29 IR 31)
				*ERR (28 IR 3582)	327 IAC 8-6-1	A	04-106	28 IR 2191	*ARR (29 IR 31)
327 IAC 8-2-10.2	A	04-13	28 IR 1233	28 IR 3212	327 IAC 15-14				*ERR (28 IR 214) 28 IR 2968
				*ERR (28 IR 3582)	327 IAC 17	N	04-228	28 IR 1288	*ERR (29 IR 548)
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	TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL				
327 IAC 8-2-34.1	N	04-13	28 IR 1240	28 IR 3218	ASSURANCE BOARD				
327 IAC 8-2-45	A	04-13	28 IR 1240	28 IR 3218	328 IAC 1-1-2	A	02-204	27 IR 2778	*CPH (27 IR 3095) 28 IR 123
				*ERR (28 IR 3583)					

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328 IAC 1-1-3	A	02-204	27 IR 2778	*CPH (27 IR 3095) 28 IR 123	329 IAC 3.1-1-12.5	N	05-66	29 IR 1262	
328 IAC 1-1-4	A	02-204	27 IR 2778	*CPH (27 IR 3095) 28 IR 124	329 IAC 3.1-1-14.1	A	05-66	29 IR 1262	28 IR 2662
328 IAC 1-1-5.1	A	02-204	27 IR 2778	*CPH (27 IR 3095) 28 IR 124	329 IAC 3.1-6-2	A	03-312	27 IR 4111	28 IR 2663
328 IAC 1-1-7.5	N	02-204	27 IR 2779	*CPH (27 IR 3095) 28 IR 124	329 IAC 3.1-6-3	A	05-66	29 IR 1264	
328 IAC 1-1-8	R	02-204	27 IR 2797	*CPH (27 IR 3095) 28 IR 144	329 IAC 3.1-6-6	A	04-318	28 IR 2194	28 IR 3553
328 IAC 1-1-8.3	N	02-204	27 IR 2779	*CPH (27 IR 3095) 28 IR 124	329 IAC 3.1-6-7	N	05-85	29 IR 843	
328 IAC 1-1-8.5	A	02-204	27 IR 2779	*CPH (27 IR 3095) 28 IR 125	329 IAC 3.1-7-2	A	05-66	29 IR 1264	28 IR 2663
328 IAC 1-1-9	A	02-204	27 IR 2779	*CPH (27 IR 3095) 28 IR 125	329 IAC 3.1-7.5	N	03-312	27 IR 4112	
328 IAC 1-1-10	A	02-204	27 IR 2779	*CPH (27 IR 3095) 28 IR 125	329 IAC 3.1-12-2	R	05-66	29 IR 1268	28 IR 2665
328 IAC 1-2-1	A	02-204	27 IR 2779	*CPH (27 IR 3095) 28 IR 125	329 IAC 3.1-13-2	A	03-312	27 IR 4113	28 IR 2665
328 IAC 1-2-3	A	02-204	27 IR 2780	*CPH (27 IR 3095) 28 IR 125	329 IAC 9-1-1	A	01-161	26 IR 1209	*CPH (26 IR 1962)
328 IAC 1-3-1	A	02-204	27 IR 2780	*CPH (27 IR 3095) 28 IR 126				27 IR 3177	*CPH (26 IR 2646)
328 IAC 1-3-1.3	N	02-204	27 IR 2780	*CPH (27 IR 3095) 28 IR 126	329 IAC 9-1-4	A	01-161	26 IR 1209	*CPH (26 IR 3073)
328 IAC 1-3-1.6	N	02-204	27 IR 2781	*CPH (27 IR 3095) 28 IR 127					*CPH (26 IR 3367)
328 IAC 1-3-2	A	02-204	27 IR 2781	*CPH (27 IR 3095) 28 IR 127					*CPH (26 IR 3671)
328 IAC 1-3-3	A	02-204	27 IR 2781	*CPH (27 IR 3095) 28 IR 127					*CPH (27 IR 2299)
				*ERR (28 IR 608)					*CPH (27 IR 2300)
328 IAC 1-3-4	A	02-204	27 IR 2783	*CPH (27 IR 3095) 28 IR 129	329 IAC 9-1-10.1	R	01-161	27 IR 3177 26 IR 1239	*ARR (27 IR 2500)
328 IAC 1-3-5	A	02-204	27 IR 2784	*CPH (27 IR 3095) 28 IR 129					*CPH (27 IR 2521)
328 IAC 1-3-6	A	02-204	27 IR 2791	*CPH (27 IR 3095) 28 IR 137					28 IR 145
328 IAC 1-4-1	A	02-204	27 IR 2791	*CPH (27 IR 3095) 28 IR 137					*CPH (26 IR 1962)
				*ERR (28 IR 608)					*CPH (26 IR 2646)
328 IAC 1-4-1.5	N	02-204		†† 28 IR 140	329 IAC 9-1-10.2	R	01-161	27 IR 3209 26 IR 1239	*CPH (26 IR 3073)
328 IAC 1-4-3	A	02-204	27 IR 2794	*CPH (27 IR 3095) 28 IR 141					*CPH (26 IR 3367)
				*ERR (28 IR 608)					*CPH (26 IR 3671)
328 IAC 1-4-4	N	02-204	27 IR 2795	*CPH (27 IR 3095) 28 IR 141					*CPH (27 IR 2299)
				*ERR (28 IR 608)					*CPH (27 IR 2300)
328 IAC 1-4-5	N	02-204		†† 28 IR 141					*ARR (27 IR 2500)
328 IAC 1-5-1	A	02-204	27 IR 2795	*CPH (27 IR 3095) 28 IR 142					*CPH (27 IR 2521)
328 IAC 1-5-2	A	02-204	27 IR 2796	*CPH (27 IR 3095) 28 IR 142	329 IAC 9-1-10.4	N	01-161	27 IR 3209 26 IR 1209	28 IR 177
328 IAC 1-5-3	A	02-204	27 IR 2796	*CPH (27 IR 3095) 28 IR 143					*CPH (26 IR 1962)
328 IAC 1-6-1	A	02-204	27 IR 2796	*CPH (27 IR 3095) 28 IR 143					*CPH (26 IR 2646)
328 IAC 1-6-2	A	02-204	27 IR 2796	*CPH (27 IR 3095) 28 IR 143					*CPH (26 IR 3073)
328 IAC 1-7-2	A	02-204	27 IR 2797	*CPH (27 IR 3095) 28 IR 144					*CPH (26 IR 3367)
328 IAC 1-7-3	R	02-204	27 IR 2797	*CPH (27 IR 3095) 28 IR 144	329 IAC 9-1-10.6	N	01-161	27 IR 3177 26 IR 1209	*CPH (26 IR 3671)
									*CPH (27 IR 2299)
									*CPH (27 IR 2300)
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329 IAC 3.1-1-7	A	03-312	27 IR 4110	28 IR 2661					
	A	05-66	29 IR 1261						
329 IAC 3.1-1-9	A	05-66	29 IR 1261						

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329 IAC 9-1-10.8	N	01-161	27 IR 3178	*ARR (27 IR 2500)	329 IAC 9-1-27	A	01-161	27 IR 3178	*CPH (27 IR 2300)
			26 IR 1210	*CPH (27 IR 2521)				26 IR 1210	*ARR (27 IR 2500)
329 IAC 9-1-14	A	01-161	27 IR 3178	28 IR 146	329 IAC 9-1-29.1	R	01-161	27 IR 3178	*CPH (27 IR 2521)
			26 IR 1210	*CPH (26 IR 1962)				26 IR 1210	28 IR 146
329 IAC 9-1-14.1	R	01-161	27 IR 3178	*CPH (26 IR 2646)	329 IAC 9-1-36	A	01-161	27 IR 3209	*CPH (26 IR 1962)
			26 IR 1239	*CPH (26 IR 3073)				26 IR 1210	*ARR (27 IR 2500)
329 IAC 9-1-14.3	N	01-161	27 IR 3209	*CPH (26 IR 3367)	329 IAC 9-1-36.5	N	01-161	27 IR 3179	*CPH (26 IR 2646)
			26 IR 1210	*CPH (26 IR 3671)				27 IR 3179	*CPH (26 IR 3073)
329 IAC 9-1-14.5	N	01-161	27 IR 3178	*CPH (27 IR 2299)	329 IAC 9-1-39.5	N	01-161	26 IR 1211	*CPH (26 IR 3367)
			26 IR 1210	*CPH (27 IR 2300)					*CPH (26 IR 3671)
329 IAC 9-1-14.7	N	01-161	27 IR 3178	*ARR (27 IR 2500)	329 IAC 9-1-41	R	01-161	27 IR 3179	*CPH (27 IR 2299)
			26 IR 1210	*CPH (27 IR 2521)				26 IR 1239	*CPH (27 IR 2300)
329 IAC 9-1-25	A	01-161	27 IR 3178	28 IR 146	329 IAC 9-1-41.1	R	01-161	27 IR 3209	*ARR (27 IR 2500)
			26 IR 1210	*CPH (26 IR 1962)				26 IR 1239	*CPH (27 IR 2521)
				*CPH (26 IR 2646)					28 IR 147
				*CPH (26 IR 3073)					*CPH (26 IR 1962)
				*CPH (26 IR 3367)					*CPH (26 IR 2646)
				*CPH (26 IR 3671)					*CPH (26 IR 3073)
				*CPH (27 IR 2299)					*CPH (26 IR 3367)
				*CPH (27 IR 2300)					*CPH (26 IR 3671)
				*ARR (27 IR 2500)					*CPH (27 IR 2299)
				*CPH (27 IR 2521)					*CPH (27 IR 2300)
				28 IR 146					*ARR (27 IR 2500)
				*CPH (26 IR 1962)					*CPH (27 IR 2521)
				*CPH (26 IR 2646)					28 IR 147
				*CPH (26 IR 3073)					*CPH (26 IR 1962)
				*CPH (26 IR 3367)					*CPH (26 IR 2646)
				*CPH (26 IR 3671)					*CPH (26 IR 3073)
				*CPH (27 IR 2299)					*CPH (26 IR 3367)
				*CPH (27 IR 2300)					*CPH (26 IR 3671)
				*ARR (27 IR 2500)					*CPH (27 IR 2299)
				*CPH (27 IR 2521)					*CPH (27 IR 2300)
				28 IR 146					*ARR (27 IR 2500)
				*CPH (26 IR 1962)					*CPH (27 IR 2521)
				*CPH (26 IR 2646)					28 IR 177
				*CPH (26 IR 3073)					*CPH (26 IR 1962)
				*CPH (26 IR 3367)					*CPH (26 IR 2646)
				*CPH (26 IR 3671)					*CPH (26 IR 3073)
				*CPH (27 IR 2299)					*CPH (26 IR 3367)
				*CPH (27 IR 2300)					*CPH (26 IR 3671)
				*ARR (27 IR 2500)					*CPH (27 IR 2299)
				*CPH (27 IR 2521)					*CPH (27 IR 2300)
				28 IR 146					*ARR (27 IR 2500)
				*CPH (26 IR 1962)					*CPH (27 IR 2521)
				*CPH (26 IR 2646)					28 IR 177
				*CPH (26 IR 3073)					*CPH (26 IR 1962)
				*CPH (26 IR 3367)					*CPH (26 IR 2646)
				*CPH (26 IR 3671)					*CPH (26 IR 3073)
				*CPH (27 IR 2299)					*CPH (26 IR 3367)

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				*CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 147				*CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 152	
329 IAC 9-1-42.1	R	01-161	27 IR 3179 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) 28 IR 177	329 IAC 9-3-2	N	01-161	27 IR 3184 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) 28 IR 155
329 IAC 9-1-47	A	01-161	27 IR 3209 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) 28 IR 147	329 IAC 9-3.1-1	A	01-161	27 IR 3187 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) 28 IR 155
329 IAC 9-1-47.1	A	01-161	27 IR 3179 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) 28 IR 147	329 IAC 9-3.1-2	A	01-161	27 IR 3187 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) 28 IR 155
329 IAC 9-2-1	A	01-161	27 IR 3179 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) 28 IR 148	329 IAC 9-3.1-3	A	01-161	27 IR 3187 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) 28 IR 156
329 IAC 9-2-2	A	01-161	27 IR 3179 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) 28 IR 150	329 IAC 9-3.1-4	A	01-161	27 IR 3188 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) 28 IR 156
329 IAC 9-2.1-1	A	01-161	27 IR 3182 26 IR 1215	*ERR (28 IR 608) *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 151	329 IAC 9-4-3	A	01-161	27 IR 3188 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) 28 IR 157
329 IAC 9-3-1	A	01-161	27 IR 3183 26 IR 1216	*CPH (26 IR 1962) *CPH (26 IR 2646)				27 IR 3189	

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329 IAC 9-4-4	A	01-161	26 IR 1221	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-5-5.1	A	01-161	26 IR 1224	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-5-1	A	01-161	27 IR 3189 26 IR 1221	28 IR 158 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-5-6	A	01-161	27 IR 3193 26 IR 1226	28 IR 161 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-5-2	A	01-161	27 IR 3190 26 IR 1223	28 IR 158 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-5-7	A	01-161	27 IR 3196 26 IR 1227	28 IR 164 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-5-3.1	R	01-161	27 IR 3191 26 IR 1239	28 IR 160 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-6-1	A	01-161	27 IR 3196 26 IR 1229	28 IR 165 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-5-3.2	N	01-161	27 IR 3209 26 IR 1223	28 IR 177 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-6-2	R	01-161	27 IR 3199 26 IR 1239	28 IR 168 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-5-4.1	R	01-161	27 IR 3192 26 IR 1239	28 IR 160 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-6-2.5	N	01-161	27 IR 3209 26 IR 1230	28 IR 177 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-5-4.2	N	01-161	27 IR 3209 26 IR 1224	28 IR 177 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-6-3	A	01-161	27 IR 3200 26 IR 1234	28 IR 168 *CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *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				27 IR 3204	28 IR 172

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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

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

357 IAC 1-6-1	A	04-160	28 IR 253	28 IR 1689
357 IAC 1-6-2	A	04-160	28 IR 254	28 IR 1690
357 IAC 1-6-3	R	04-160	28 IR 257	28 IR 1693
357 IAC 1-6-4	A	04-160	28 IR 256	28 IR 1692
357 IAC 1-6-5	A	04-160	28 IR 256	28 IR 1692
357 IAC 1-6-6	A	04-160	28 IR 256	28 IR 1693
357 IAC 1-6-7	N	04-160	28 IR 257	28 IR 1693
357 IAC 1-6-8	N	04-160	28 IR 257	28 IR 1693
357 IAC 1-7-1	A	04-159	28 IR 249	28 IR 1685
357 IAC 1-7-2	A	04-159	28 IR 250	28 IR 1686
357 IAC 1-7-3	R	04-159	28 IR 252	28 IR 1689
357 IAC 1-7-4	A	04-159	28 IR 251	28 IR 1687
357 IAC 1-7-5	A	04-159	28 IR 252	28 IR 1688
357 IAC 1-7-6	A	04-159	28 IR 252	28 IR 1688
357 IAC 1-7-7	N	04-159	28 IR 252	28 IR 1688
357 IAC 1-7-8	N	04-159	28 IR 252	28 IR 1689
357 IAC 1-8	RA	05-171		29 IR 1381
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	*ARR (29 IR 1216)
			29 IR 1269	
405 IAC 1-14.6-23	N	05-114	28 IR 3655	*ARR (29 IR 1216)
			29 IR 1269	
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) 29 IR 1212
405 IAC 5-24-5	A	05-76	28 IR 3653	*NRA (29 IR 575) 29 IR 1212
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

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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 **29 IR 1213**
407 IAC 2-3-1 A 05-156 28 IR 3657 **29 IR 1213**

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**
*ERR (28 IR 1695)
410 IAC 16.2-3.1-21 N 04-7 27 IR 2545 **28 IR 192**
410 IAC 16.2-3.1-53 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
410 IAC 28 N 05-192 29 IR 1271

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

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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	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)
460 IAC 2-2.1	N	04-76	27 IR 3701	*NRA (28 IR 233) 28 IR 2368	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)
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 3-1.1-15	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 3-1.1-1	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 3-1.1-16	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 3-1.1-2	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 3-1.1-20	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 3-1.1-4	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 3-1.1-20.1	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 3-1.1-6	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 3-1.1-22.5	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 3-1.1-7.2	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 3-1.1-24	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 3-1.1-7.4	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 3-1.1-28	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 3-1.1-8	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 3-1.1-28.5	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 3-1.1-9	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 3-1.1-29	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 3-1.1-10	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 3-1.1-29.5	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 3-1.1-12	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 3-1.1-32	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 3-1.1-12.5	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 3-1.1-32.1	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)

Rules Affected by Volumes 28 and 29

[illegible]

Rules Affected by Volumes 28 and 29

[illegible]

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511 IAC 6.1-10-3				*ERR (28 IR 3307)	515 IAC 8-1-1				*ERR (28 IR 3308)
511 IAC 6.1-10-5				*ERR (28 IR 3307)	515 IAC 8-1-23	A	03-321	27 IR 2330	*ARR (28 IR 610)
511 IAC 6.2-1-1				*ERR (28 IR 3307)					28 IR 1477
511 IAC 6.2-2-2				*ERR (28 IR 3307)	515 IAC 8-1-42	A	03-321	27 IR 2330	*ARR (28 IR 610)
511 IAC 6.2-2-4				*ERR (28 IR 3307)					28 IR 1478
511 IAC 6.2-2-5				*ERR (28 IR 3307)	515 IAC 9-1-1				*ERR (28 IR 3308)
511 IAC 6.2-2-6				*ERR (28 IR 3307)	515 IAC 9-1-18				*ERR (28 IR 3309)
511 IAC 6.2-2-7				*ERR (28 IR 3307)	515 IAC 9-1-19				*ERR (28 IR 3309)
511 IAC 6.2-2-8				*ERR (28 IR 3307)	515 IAC 9-1-22	A	03-322	27 IR 2331	*ARR (28 IR 610)
511 IAC 6.2-2-9				*ERR (28 IR 3307)					28 IR 1479
511 IAC 6.2-2-11				*ERR (28 IR 3307)	515 IAC 10	N	04-197	28 IR 263	*ARR (28 IR 2991)
511 IAC 6.2-2-12				*ERR (28 IR 3307)	515 IAC 12	N	04-141	27 IR 3703	28 IR 2135
511 IAC 6.2-2.5-4				*ERR (28 IR 3307)					
511 IAC 6.2-2.5-9				*ERR (28 IR 3307)	TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY				
511 IAC 6.2-3-1				*ERR (28 IR 3307)	540 IAC 1-1-11	RA	04-54	27 IR 2880	*CPH (27 IR 3096)
511 IAC 6.2-3-3				*ERR (28 IR 3307)					28 IR 324
511 IAC 6.2-4-1				*ERR (28 IR 3307)	540 IAC 1-1-17	RA	04-54	27 IR 2880	*CPH (27 IR 3096)
511 IAC 6.2-4-2				*ERR (28 IR 3307)					28 IR 324
511 IAC 6.2-4-4				*ERR (28 IR 3307)					
511 IAC 6.2-6-2				*ERR (28 IR 3307)	TITLE 570 INDIANA COMMISSION ON PROPRIETARY EDUCATION				
511 IAC 6.2-6-3				*ERR (28 IR 3307)	570 IAC 1-1-1	A	05-178	29 IR 111	
511 IAC 6.2-6-7				*ERR (28 IR 3307)	570 IAC 1-2-3	A	05-178	29 IR 114	
511 IAC 6.2-6-10				*ERR (28 IR 3307)	570 IAC 1-2-4	A	05-178	29 IR 114	
511 IAC 6.2-7-2				*ERR (28 IR 3307)	570 IAC 1-3-1	A	05-178	29 IR 114	
511 IAC 7-17-16				*ERR (28 IR 3307)	570 IAC 1-3-2	A	05-178	29 IR 115	
511 IAC 7-18-1				*ERR (28 IR 3307)	570 IAC 1-3-3	A	05-178	29 IR 116	
511 IAC 7-18-2				*ERR (28 IR 3307)	570 IAC 1-4-1	A	05-178	29 IR 116	
511 IAC 7-27-4				*ERR (28 IR 3308)	570 IAC 1-4-2	A	05-178	29 IR 117	
511 IAC 8	RA	04-47	27 IR 2879	28 IR 323	570 IAC 1-4-3	A	05-178	29 IR 118	
511 IAC 8-1-1				*ERR (28 IR 3308)	570 IAC 1-4-4	A	05-178	29 IR 119	
511 IAC 9-1-0.5				*ERR (28 IR 3308)	570 IAC 1-5-2	A	05-178	29 IR 119	
511 IAC 9-1-1				*ERR (28 IR 3308)	570 IAC 1-5-3	A	05-178	29 IR 120	
511 IAC 9-1-2				*ERR (28 IR 3308)	570 IAC 1-5-4	A	05-178	29 IR 120	
511 IAC 9-2-2				*ERR (28 IR 3308)	570 IAC 1-5-5	A	05-178	29 IR 120	
511 IAC 9-5-2				*ERR (28 IR 3308)	570 IAC 1-5-6	A	05-178	29 IR 120	
511 IAC 9-5-4				*ERR (28 IR 3308)	570 IAC 1-5-7	A	05-178	29 IR 121	
511 IAC 9-6-1				*ERR (28 IR 3308)	570 IAC 1-6-1	A	05-178	29 IR 121	
511 IAC 10-6-1				*ERR (28 IR 3308)	570 IAC 1-6-2	A	05-178	29 IR 121	
511 IAC 10-6-3				*ERR (28 IR 3308)	570 IAC 1-6-3	A	05-178	29 IR 121	
511 IAC 10-6-5				*ERR (28 IR 3308)	570 IAC 1-6-4	A	05-178	29 IR 121	
511 IAC 11-7-3				*ERR (28 IR 3308)	570 IAC 1-6-6	A	05-178	29 IR 122	
511 IAC 12-2-4				*ERR (28 IR 3308)	570 IAC 1-8-3	A	05-178	29 IR 122	
TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD					570 IAC 1-8-4.5	A	05-178	29 IR 123	
514 IAC	N	03-298	27 IR 1634	28 IR 197	570 IAC 1-8-5.5	N	05-178	29 IR 123	
TITLE 515 PROFESSIONAL STANDARDS, ADVISORY BOARD					570 IAC 1-8-7	A	05-178	29 IR 123	
OF THE DIVISION OF					570 IAC 1-9-5	A	05-178	29 IR 124	
515 IAC 1-1-89				*ERR (28 IR 3308)	570 IAC 1-10.1-4	A	05-178	29 IR 124	
515 IAC 1-1-93				*ERR (28 IR 3308)	570 IAC 1-10.1-6	A	05-178	29 IR 125	
515 IAC 1-2-17				*ERR (28 IR 3308)	570 IAC 1-11-4	A	05-178	29 IR 125	
515 IAC 1-2-18				*ERR (28 IR 3308)	570 IAC 1-11-8	A	05-178	29 IR 125	
515 IAC 1-4-1	A	03-320	27 IR 2558	*ARR (28 IR 610)	570 IAC 1-12-1	A	05-178	29 IR 125	
				28 IR 1475	570 IAC 1-12-2	A	05-178	29 IR 126	
				*ERR (28 IR 3308)	570 IAC 1-13-1	A	05-178	29 IR 126	
515 IAC 1-4-2	A	03-320	27 IR 2558	*ARR (28 IR 610)	570 IAC 1-13-2	A	05-178	29 IR 126	
				28 IR 1475	570 IAC 1-13-3	A	05-178	29 IR 127	
				*ERR (28 IR 3308)	570 IAC 1-13-4	A	05-178	29 IR 127	
515 IAC 1-6-1				*ERR (28 IR 3308)	570 IAC 1-14-2	A	05-178	29 IR 127	
515 IAC 1-6-4				*ERR (28 IR 3308)	570 IAC 1-14-3	A	05-178	29 IR 128	
515 IAC 1-6-6				*ERR (28 IR 3308)	570 IAC 1-14-4	A	05-178	29 IR 128	
515 IAC 1-7-13				*ERR (28 IR 3308)	570 IAC 1-14-10	A	05-178	29 IR 128	
515 IAC 1-7-16				*ERR (28 IR 3308)	570 IAC 1-14-11	A	05-178	29 IR 128	
515 IAC 2-1-3				*ERR (28 IR 3308)	TITLE 575 STATE SCHOOL BUS COMMITTEE				
515 IAC 2-1-4				*ERR (28 IR 3308)	575 IAC 1-1-1				*ERR (28 IR 3583)
515 IAC 4-1-2				*ERR (28 IR 3308)	575 IAC 1-1-5				*ERR (28 IR 3583)
515 IAC 4-1-3				*ERR (28 IR 3308)	575 IAC 1-5.5-1				*ERR (28 IR 3583)
515 IAC 4-2-6				*ERR (28 IR 3308)	TITLE 590 INDIANA LIBRARY AND HISTORICAL BOARD				
515 IAC 4-2-7				*ERR (28 IR 3308)	590 IAC 3	RA	05-89		29 IR 1382
515 IAC 5-1-4				*ERR (28 IR 3308)					

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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	*ARR (29 IR 820)
			29 IR 882	
646 IAC 3-10-13	A	05-128	28 IR 3343	*ARR (29 IR 820)
			29 IR 882	

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

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655 IAC 1-2.1-99	N	04-138	28 IR 1023	*AROC (28 IR 1073) 28 IR 2707	675 IAC 12-6-11	A	05-104	29 IR 1335
655 IAC 1-2.1-100	N	04-138	28 IR 1023	*AROC (28 IR 1073) 28 IR 2707	675 IAC 12-6-12	A	05-108	29 IR 1336
655 IAC 1-2.1-101	N	04-138	28 IR 1024	*AROC (28 IR 1073) 28 IR 2708	675 IAC 12-6-14	A	05-108	29 IR 1336
655 IAC 1-2.1-102	N	04-138	28 IR 1024	*AROC (28 IR 1073) 28 IR 2708	675 IAC 12-6-15	A	05-108	29 IR 1337
655 IAC 1-2.1-103	N	04-138	28 IR 1025	*AROC (28 IR 1073) 28 IR 2709	675 IAC 12-6-16	A	05-108	29 IR 1338
655 IAC 1-2.1-104	N	04-138	28 IR 1025	*AROC (28 IR 1073) 28 IR 2709	675 IAC 12-6-18	A	05-108	29 IR 1338
655 IAC 1-2.1-105	N	04-138	28 IR 1026	*AROC (28 IR 1073) 28 IR 2710	675 IAC 12-6-19	A	05-108	29 IR 1339
655 IAC 1-2.1-106	N	04-138	28 IR 1026	*AROC (28 IR 1073) 28 IR 2710	675 IAC 12-6-20	A	05-108	29 IR 1339
655 IAC 1-2.1-107	N	04-138	28 IR 1027	*AROC (28 IR 1073) 28 IR 2710	675 IAC 12-6-21	A	05-108	29 IR 1339
655 IAC 1-2.1-108	N	04-138	28 IR 1027	*AROC (28 IR 1073) 28 IR 2711	675 IAC 12-6-23	A	05-108	29 IR 1340
655 IAC 1-2.1-109	N	04-138	28 IR 1027	*AROC (28 IR 1073) 28 IR 2711	675 IAC 12-7-1	A	05-108	29 IR 1340
655 IAC 1-2.1-110	N	04-138	28 IR 1027	*AROC (28 IR 1073) 28 IR 2711	675 IAC 12-7-2	A	05-108	29 IR 1340
655 IAC 1-2.1-111	N	04-297	28 IR 2419	*AROC (28 IR 3354) 29 IR 481	675 IAC 12-7-3	A	05-108	29 IR 1341
655 IAC 1-2.1-112	N	04-297	28 IR 2423	*AROC (28 IR 3354) 29 IR 485	675 IAC 12-7-4	A	05-108	29 IR 1341
655 IAC 1-2.1-113	N	04-297	28 IR 2423	*AROC (28 IR 3354) 29 IR 485	675 IAC 12-7-5	A	05-108	29 IR 1342
655 IAC 1-2.1-114	N	04-297	28 IR 2424	*AROC (28 IR 3354) 29 IR 485	675 IAC 12-8-1	A	05-108	29 IR 1342
655 IAC 1-2.1-115	N	04-297	28 IR 2425	*AROC (28 IR 3354) 29 IR 486	675 IAC 12-8-3	A	05-108	29 IR 1342
655 IAC 1-3-8	R	03-186	27 IR 941	*AROC (27 IR 1652)	675 IAC 12-8-4	A	05-108	29 IR 1343
655 IAC 1-4-2	A	04-138	28 IR 1028	*AROC (28 IR 1073) 28 IR 2712	675 IAC 12-8-5	A	05-108	29 IR 1344
TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION					675 IAC 12-8-6	A	05-108	29 IR 1344
675 IAC 12-1.1-1	A	05-108	29 IR 1317		675 IAC 12-8-7	A	05-108	29 IR 1344
675 IAC 12-1.1-2	A	05-108	29 IR 1317		675 IAC 12-8-8	A	05-108	29 IR 1345
675 IAC 12-1.1-3	A	05-108	29 IR 1317		675 IAC 12-8-9	A	05-108	29 IR 1345
675 IAC 12-1.1-4	A	05-108	29 IR 1317		675 IAC 12-8-10	A	05-108	29 IR 1346
675 IAC 12-1.1-5	A	05-108	29 IR 1318		675 IAC 12-8-11	A	05-108	29 IR 1346
675 IAC 12-3-2	A	05-108	29 IR 1318		675 IAC 12-8-12	A	05-108	29 IR 1347
675 IAC 12-3-6	A	05-108	29 IR 1319		675 IAC 12-8-13	A	05-108	29 IR 1347
675 IAC 12-3-8	A	05-108	29 IR 1320		675 IAC 12-8-14	A	05-108	29 IR 1347
675 IAC 12-3-11	A	05-108	29 IR 1320		675 IAC 12-8-15	A	05-108	29 IR 1348
675 IAC 12-3-13	A	05-108	29 IR 1320		675 IAC 12-8-17	A	05-108	29 IR 1348
675 IAC 12-3-14	A	05-108	29 IR 1321		675 IAC 12-8-18	A	05-108	29 IR 1349
675 IAC 12-3-15	A	05-108	29 IR 1322		675 IAC 12-8-19	A	05-108	29 IR 1349
675 IAC 12-4-4	A	05-108	29 IR 1322		675 IAC 12-8-20	A	05-108	29 IR 1349
675 IAC 12-4-5	A	05-108	29 IR 1322		675 IAC 12-8-21	A	05-108	29 IR 1350
675 IAC 12-4-7	A	05-108	29 IR 1322		675 IAC 12-9-1	A	05-108	29 IR 1350
675 IAC 12-4-11	A	05-108	29 IR 1323		675 IAC 12-9-2	A	05-108	29 IR 1350
675 IAC 12-5-2	A	05-108	29 IR 1324		675 IAC 12-9-3	A	05-108	29 IR 1351
675 IAC 12-5-4	A	05-108	29 IR 1325		675 IAC 12-9-4	A	05-108	29 IR 1352
675 IAC 12-5-5	A	05-108	29 IR 1325		675 IAC 12-9-5	A	05-108	29 IR 1352
675 IAC 12-5-6	A	05-108	29 IR 1326		675 IAC 12-9-6	A	05-108	29 IR 1352
675 IAC 12-5-9	A	05-108	29 IR 1327		675 IAC 12-9-7	A	05-108	29 IR 1353
675 IAC 12-6-2	A	05-108	29 IR 1327		675 IAC 12-9-9	A	05-108	29 IR 1353
675 IAC 12-6-3	A	05-108	29 IR 1328		675 IAC 12-10-8	A	05-108	29 IR 1353
675 IAC 12-6-4	A	05-108	29 IR 1328		675 IAC 12-10-9	A	05-108	29 IR 1353
675 IAC 12-6-6	A	05-108	29 IR 1331		675 IAC 12-11-1	A	05-108	29 IR 1354
675 IAC 12-6-7	A	05-108	29 IR 1332		675 IAC 12-11-2	A	05-108	29 IR 1354
675 IAC 12-6-8	A	05-108	29 IR 1333		675 IAC 12-11-3	A	05-108	29 IR 1355
675 IAC 12-6-9	A	05-108	29 IR 1334		675 IAC 12-11-4	A	05-108	29 IR 1355
675 IAC 12-6-10	A	05-108	29 IR 1335		675 IAC 12-11-5	A	05-108	29 IR 1355
					675 IAC 12-11-6	A	05-108	29 IR 1355
					675 IAC 12-11-7	R	05-108	29 IR 1360
					675 IAC 12-11-8	A	05-108	29 IR 1356
					675 IAC 12-11-9	A	05-108	29 IR 1356
					675 IAC 12-12-1	A	05-108	29 IR 1356
					675 IAC 12-12-2	A	05-108	29 IR 1356
					675 IAC 12-12-3	A	05-108	29 IR 1357
					675 IAC 12-12-4	A	05-108	29 IR 1357
					675 IAC 12-12-5	A	05-108	29 IR 1357
					675 IAC 12-12-6	A	05-108	29 IR 1358
					675 IAC 12-12-7	A	05-108	29 IR 1358
					675 IAC 12-13-2	A	05-108	29 IR 1358
					675 IAC 12-13-3	A	05-108	29 IR 1359
					675 IAC 12-13-4	A	05-108	29 IR 1359
					675 IAC 12-14-1	A	05-108	29 IR 1359
					675 IAC 13-1-4	R	05-104	29 IR 1316
					675 IAC 13-1-5	R	05-104	29 IR 1316
					675 IAC 13-1-9.5	R	05-104	29 IR 1316
					675 IAC 13-1-9.6	R	05-104	29 IR 1316
					675 IAC 13-1-22	R	05-104	29 IR 1316

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675 IAC 13-1-27	R	05-104	29 IR 1316		675 IAC 13-2.4-174		02-115		*ERR (28 IR 1695)
675 IAC 13-1-28	R	05-104	29 IR 1316		675 IAC 13-2.4-180.5	N	04-216	28 IR 1536	*AROC (29 IR 146)
675 IAC 13-2.4-3		02-115		*ERR (28 IR 1695)	675 IAC 13-2.4-201.5	N	04-216	28 IR 1536	*AROC (29 IR 146)
675 IAC 13-2.4-10	A	04-216	28 IR 1529	*AROC (29 IR 146)					29 IR 502
				29 IR 496	675 IAC 13-2.4-201.7	N	04-216	28 IR 1536	*AROC (29 IR 146)
675 IAC 13-2.4-15		02-115		*ERR (28 IR 1695)					29 IR 502
675 IAC 13-2.4-19	A	04-216	28 IR 1529	*AROC (29 IR 146)	675 IAC 13-2.4-210.3	N	04-216	28 IR 1536	*AROC (29 IR 146)
				29 IR 496					29 IR 502
675 IAC 13-2.4-20	A	04-216	28 IR 1530	*AROC (29 IR 146)	675 IAC 13-2.4-210.5	N	04-216	28 IR 1536	*AROC (29 IR 146)
				29 IR 496					29 IR 502
675 IAC 13-2.4-22	A	04-216	28 IR 1530	*AROC (29 IR 146)	675 IAC 13-2.4-213.3	N	04-216	28 IR 1536	*AROC (29 IR 146)
				29 IR 496					29 IR 502
675 IAC 13-2.4-24.3	N	04-216	28 IR 1530	*AROC (29 IR 146)	675 IAC 13-2.4-213.5	N	04-216	28 IR 1536	*AROC (29 IR 146)
				29 IR 496					29 IR 502
675 IAC 13-2.4-32.5	N	04-216	28 IR 1530	*AROC (29 IR 146)	675 IAC 13-2.4-213.7	N	04-216	28 IR 1536	*AROC (29 IR 146)
				29 IR 497					29 IR 503
675 IAC 13-2.4-40.5	N	04-216	28 IR 1531	*AROC (29 IR 146)	675 IAC 13-2.4-214.2	N	04-216	28 IR 1537	*AROC (29 IR 146)
				29 IR 497					29 IR 503
675 IAC 13-2.4-40.6	N	04-216	28 IR 1531	*AROC (29 IR 146)	675 IAC 13-2.4-214.4	N	04-216	28 IR 1537	*AROC (29 IR 146)
				29 IR 497					29 IR 503
675 IAC 13-2.4-41.5	N	04-216	28 IR 1531	*AROC (29 IR 146)	675 IAC 13-2.4-214.6	N	04-216	28 IR 1537	*AROC (29 IR 146)
				29 IR 497					29 IR 503
675 IAC 13-2.4-42.7	N	04-216	28 IR 1531	*AROC (29 IR 146)	675 IAC 13-2.4-214.7	N	04-216	28 IR 1537	*AROC (29 IR 146)
				29 IR 497					29 IR 503
675 IAC 13-2.4-43.2	N	04-216	28 IR 1531	*AROC (29 IR 146)	675 IAC 13-2.4-222		02-115		*ERR (28 IR 1695)
				29 IR 497	675 IAC 13-2.4-228.5	N	04-216	28 IR 1538	*AROC (29 IR 146)
675 IAC 13-2.4-43.6	N	04-216	28 IR 1531	*AROC (29 IR 146)					29 IR 504
				29 IR 497	675 IAC 14-4.2	R	04-194	28 IR 312	28 IR 3304
675 IAC 13-2.4-47	A	04-216	28 IR 1531	*AROC (29 IR 146)	675 IAC 14-4.2-3				*ERR (28 IR 970)
				29 IR 497	675 IAC 14-4.2-19.5				*ERR (28 IR 970)
675 IAC 13-2.4-55	A	04-216	28 IR 1533	*AROC (29 IR 146)	675 IAC 14-4.2-20.5				*ERR (28 IR 970)
				29 IR 499	675 IAC 14-4.2-21				*ERR (28 IR 970)
675 IAC 13-2.4-55.5	N	04-216	28 IR 1533	*AROC (29 IR 146)	675 IAC 14-4.2-26.5				*ERR (28 IR 970)
				29 IR 499	675 IAC 14-4.2-29				*ERR (28 IR 970)
675 IAC 13-2.4-56.5	N	04-216	28 IR 1533	*AROC (29 IR 146)	675 IAC 14-4.2-30	A	04-8	27 IR 2333	28 IR 562
				29 IR 499	675 IAC 14-4.2-53.7				*ERR (28 IR 970)
675 IAC 13-2.4-68		02-115		*ERR (28 IR 1695)	675 IAC 14-4.2-69.5				*ERR (28 IR 970)
675 IAC 13-2.4-96.5	N	04-216	28 IR 1533	*AROC (29 IR 146)	675 IAC 14-4.2-69.6				*ERR (28 IR 970)
675 IAC 13-2.4-105.6	N	04-216	28 IR 1533	*AROC (29 IR 146)	675 IAC 14-4.2-73.5				*ERR (28 IR 970)
				29 IR 500	675 IAC 14-4.2-81.2				*ERR (28 IR 970)
675 IAC 13-2.4-107.3	N	04-216	28 IR 1534	*AROC (29 IR 146)	675 IAC 14-4.2-89.2	A	04-8	27 IR 2333	28 IR 562
				29 IR 500	675 IAC 14-4.2-89.6				*ERR (28 IR 970)
675 IAC 13-2.4-107.5	N	04-216	28 IR 1534	*AROC (29 IR 146)	675 IAC 14-4.2-89.8				*ERR (28 IR 970)
				29 IR 500	675 IAC 14-4.2-107				*ERR (28 IR 970)
675 IAC 13-2.4-107.6	N	04-216	28 IR 1534	*AROC (29 IR 146)	675 IAC 14-4.3	N	04-194	28 IR 268	28 IR 3256
				29 IR 500	675 IAC 14-4.3-136.5	N	04-273	28 IR 1850	
675 IAC 13-2.4-118	A	04-216	28 IR 1534	*AROC (29 IR 146)	675 IAC 14-4.3-155.5	N	04-273	28 IR 1850	29 IR 806
				29 IR 500	675 IAC 14-4.3-213	A	04-273	28 IR 1850	†† 29 IR 806
675 IAC 13-2.4-118.4	N	04-216	28 IR 1534	*AROC (29 IR 146)	675 IAC 14-4.3-214	R	04-273	28 IR 1859	†† 29 IR 815
				29 IR 500	675 IAC 14-4.3-214.5	N	04-273	28 IR 1850	†† 29 IR 807
675 IAC 13-2.4-121.5	N	04-216	28 IR 1534	*AROC (29 IR 146)	675 IAC 14-4.3-215	A	04-273	28 IR 1850	†† 29 IR 807
				29 IR 500	675 IAC 14-4.3-216	A	04-273	28 IR 1851	†† 29 IR 807
675 IAC 13-2.4-122	A	04-216	28 IR 1534	*AROC (29 IR 146)	675 IAC 14-4.3-217	R	04-273	28 IR 1859	†† 29 IR 815
				29 IR 500	675 IAC 14-4.3-219.6	N	04-273	28 IR 1851	
675 IAC 13-2.4-122.5	N	04-216	28 IR 1535	*AROC (29 IR 146)	675 IAC 14-4.3-220.3	N	04-273	28 IR 1851	†† 29 IR 807
				29 IR 501	675 IAC 14-4.3-220.6	N	04-273	28 IR 1851	†† 29 IR 807
675 IAC 13-2.4-131		02-115		*ERR (28 IR 1695)	675 IAC 14-4.3-220.7	N	04-273	28 IR 1851	†† 29 IR 808
675 IAC 13-2.4-132	A	04-216	28 IR 1535	*AROC (29 IR 146)	675 IAC 14-4.3-220.8	N	04-273	28 IR 1852	†† 29 IR 808
				29 IR 501	675 IAC 14-4.3-226.2	N	04-273	28 IR 1852	†† 29 IR 808
675 IAC 13-2.4-132.3	N	04-216	28 IR 1535	*AROC (29 IR 146)	675 IAC 14-4.3-227.1	N	04-273	28 IR 1852	†† 29 IR 808
				29 IR 501	675 IAC 14-4.3-227.5	N	04-273	28 IR 1852	†† 29 IR 808
675 IAC 13-2.4-132.5	N	04-216	28 IR 1535	*AROC (29 IR 146)	675 IAC 14-4.3-227.6	N	04-273	28 IR 1852	†† 29 IR 808
				29 IR 501	675 IAC 14-4.3-228	A	04-273	28 IR 1852	†† 29 IR 808
675 IAC 13-2.4-133.5	N	04-216	28 IR 1535	*AROC (29 IR 146)	675 IAC 14-4.3-229.5	N	04-273	28 IR 1852	†† 29 IR 809
				29 IR 501	675 IAC 14-4.3-231	A	04-273	28 IR 1853	†† 29 IR 809
675 IAC 13-2.4-134.5	N	04-216	28 IR 1535	*AROC (29 IR 146)	675 IAC 14-4.3-233	A	04-273	28 IR 1853	†† 29 IR 809
				29 IR 501	675 IAC 14-4.3-233.5	N	04-273	28 IR 1853	†† 29 IR 809
675 IAC 13-2.4-143	A	04-216	28 IR 1535	*AROC (29 IR 146)	675 IAC 14-4.3-234	A	04-273	28 IR 1853	†† 29 IR 810
				29 IR 501					

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675 IAC 14-4.3-235	A	04-273	28 IR 1854	††29 IR 810	675 IAC 22-2.2-8	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-239.5	N	04-273	28 IR 1854	††29 IR 810		R	05-104	29 IR 1316	
675 IAC 14-4.3-241	A	04-273	28 IR 1854	††29 IR 810	675 IAC 22-2.2-9	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-241.5	N	04-273	28 IR 1854	††29 IR 810		R	05-104	29 IR 1316	
675 IAC 14-4.3-242	A	04-273	28 IR 1854	††29 IR 810	675 IAC 22-2.2-10	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-244.5	N	04-273	28 IR 1854	††29 IR 810		R	05-104	29 IR 1316	
675 IAC 14-4.3-245	R	04-273	28 IR 1859	††29 IR 815	675 IAC 22-2.2-11	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-247	A	04-273	28 IR 1855	††29 IR 811	675 IAC 22-2.2-12	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-247.5	N	04-273	28 IR 1855	††29 IR 811		R	05-104	29 IR 1316	
675 IAC 14-4.3-248.5	N	04-273	28 IR 1855	††29 IR 811	675 IAC 22-2.2-13	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-249.5	N	04-273	28 IR 1855	††29 IR 811		R	05-104	29 IR 1316	
675 IAC 14-4.3-251	R	04-273	28 IR 1859	††29 IR 815	675 IAC 22-2.2-15	RA	04-19	27 IR 2340	28 IR 324
675 IAC 14-4.3-252	R	04-273	28 IR 1859	††29 IR 815		R	05-104	29 IR 1316	
675 IAC 14-4.3-253	R	04-273	28 IR 1859	††29 IR 815	675 IAC 22-2.2-16	RA	04-19	27 IR 2340	28 IR 324
675 IAC 14-4.3-254.5	N	04-273	28 IR 1855	††29 IR 811		R	05-104	29 IR 1316	
675 IAC 14-4.3-254.7	N	04-273	28 IR 1855	††29 IR 811	675 IAC 22-2.2-17	RA	04-19	27 IR 2340	28 IR 324
675 IAC 15-1-1	R	04-227	28 IR 1053	29 IR 29		R	05-104	29 IR 1316	
675 IAC 15-1-2	R	04-227	28 IR 1053	29 IR 29	675 IAC 22-2.2-18	RA	04-19	27 IR 2340	28 IR 324
675 IAC 15-1-3	R	04-227	28 IR 1053	29 IR 29		R	05-104	29 IR 1316	
675 IAC 15-1-5	R	04-227	28 IR 1053	29 IR 29	675 IAC 22-2.2-21	RA	04-19	27 IR 2340	28 IR 324
675 IAC 15-1-6	R	04-227	28 IR 1054	29 IR 29		R	05-104	29 IR 1316	
675 IAC 15-1-7	R	04-227	28 IR 1054	29 IR 29	675 IAC 22-2.2-22	RA	04-19	27 IR 2340	28 IR 324
675 IAC 15-1-8.1	R	04-227	28 IR 1054	29 IR 29	675 IAC 22-2.2-23	RA	04-19	27 IR 2340	28 IR 324
675 IAC 15-1-10	R	04-227	28 IR 1054	29 IR 29		R	05-104	29 IR 1316	
675 IAC 15-1-11	R	04-227	28 IR 1054	29 IR 29	675 IAC 22-2.2-24	RA	04-19	27 IR 2340	28 IR 324
675 IAC 15-1-12	R	04-227	28 IR 1054	29 IR 29		R	05-104	29 IR 1316	
675 IAC 15-1-13	R	04-227	28 IR 1054	29 IR 29	675 IAC 22-2.2-25	RA	04-19	27 IR 2340	28 IR 324
675 IAC 15-1-14	R	04-227	28 IR 1054	29 IR 29		R	05-104	29 IR 1316	
675 IAC 15-1-16	R	04-227	28 IR 1054	29 IR 29	675 IAC 22-2.2-26	N	04-196	28 IR 1029	*CPH (28 IR 1498)
675 IAC 15-1-17	R	04-227	28 IR 1054	29 IR 29					*AROC (28 IR 2461)
675 IAC 15-1-19	R	04-227	28 IR 1054	29 IR 29					*ARR (29 IR 31)
675 IAC 15-1-20	R	04-227	28 IR 1054	29 IR 29					29 IR 487
675 IAC 15-1-21	R	04-227	28 IR 1054	29 IR 29	675 IAC 22-2.2-49.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 15-1-22	R	04-227	28 IR 1054	29 IR 29					28 IR 2374
675 IAC 15-1.1	N	04-227	28 IR 1037	29 IR 13	675 IAC 22-2.2-107.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 15-1.2	N	04-227	28 IR 1039	29 IR 15	675 IAC 22-2.2-134.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 15-1.3	N	04-227	28 IR 1046	29 IR 21					28 IR 2374
675 IAC 15-1.4	N	04-227	28 IR 1048	29 IR 23	675 IAC 22-2.2-183	RA	04-19	27 IR 2340	28 IR 324
675 IAC 15-1.5	N	04-227	28 IR 1049	29 IR 25		R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 15-1.6	N	04-227	28 IR 1051	29 IR 26					28 IR 2374
675 IAC 15-1.7	N	04-227	28 IR 1052	29 IR 28	675 IAC 22-2.2-221.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 16-1.3	RA	05-3	28 IR 3052	29 IR 896					28 IR 2374
	RA	05-217			675 IAC 22-2.2-240.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 16-2	RA	05-3	28 IR 3052	29 IR 896	675 IAC 22-2.2-241.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
	RA	05-217		29 IR 815	675 IAC 22-2.2-243.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 17-1.6	R	04-273	28 IR 1859	29 IR 811	675 IAC 22-2.2-245.2	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 17-1.7	N	04-273	28 IR 1855	*ERR (28 IR 1696)					28 IR 2374
675 IAC 18-1.4-3		02-116		*AROC (29 IR 146)	675 IAC 22-2.2-245.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 18-1.4-10.5	N	04-217	28 IR 1309	29 IR 11					28 IR 2374
				*AROC (29 IR 146)	675 IAC 22-2.2-365.2	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 18-1.4-11.5	N	04-217	28 IR 1309	29 IR 11					28 IR 2374
				*ERR (28 IR 1696)	675 IAC 22-2.2-365.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 18-1.4-12		02-116		*ERR (28 IR 1696)					28 IR 2374
675 IAC 18-1.4-27		02-116		*AROC (29 IR 146)	675 IAC 22-2.2-368.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 18-1.4-32.3	N	04-217	28 IR 1309	29 IR 11	675 IAC 22-2.2-369.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
				*AROC (29 IR 146)					28 IR 2374
675 IAC 18-1.4-32.5	N	04-217	28 IR 1309	29 IR 11	675 IAC 22-2.2-378.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
				*AROC (29 IR 146)					28 IR 2374
675 IAC 18-1.4-49.5	N	04-217	28 IR 1309	29 IR 11	675 IAC 22-2.2-412.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
				28 IR 324					28 IR 2374
675 IAC 22-2.2-3	RA	04-19	27 IR 2339		675 IAC 22-2.2-437.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
	R	05-104	29 IR 1316	28 IR 324					28 IR 2374
675 IAC 22-2.2-4	RA	04-19	27 IR 2339		675 IAC 22-2.2-437.7	R	04-56	27 IR 2864	*CPH (28 IR 982)
	R	05-104	29 IR 1316	28 IR 324					28 IR 2374
675 IAC 22-2.2-5	RA	04-19	27 IR 2339		675 IAC 22-2.2-443.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
	R	05-104	29 IR 1316	28 IR 324					28 IR 2374
675 IAC 22-2.2-6	RA	04-19	27 IR 2339		675 IAC 22-2.2-511.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
	R	05-104	29 IR 1316	28 IR 324	675 IAC 22-2.2-515.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-7	RA	04-19	27 IR 2339						
	R	05-104	29 IR 1316	28 IR 324					

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675 IAC 22-2.2-540	R	04-56	27 IR 2864	*CPH (28 IR 982) 28 IR 2374	675 IAC 28	N	05-104	29 IR 1274	
675 IAC 22-2.3-29.5	N	04-56	27 IR 2860	*CPH (28 IR 982) 28 IR 2369	TITLE 685 REGULATED AMUSEMENT DEVICE SAFETY BOARD				
675 IAC 22-2.3-35.5	N	04-56	27 IR 2860	*CPH (28 IR 982) 28 IR 2370	685 IAC 1	RA	04-124	27 IR 3343	28 IR 1072
675 IAC 22-2.3-36	A	04-56	27 IR 2860	*CPH (28 IR 982) 28 IR 2370	TITLE 710 SECURITIES DIVISION				
675 IAC 22-2.3-36.3	N	04-56	27 IR 2861	*CPH (28 IR 982) 28 IR 2370	710 IAC 1-14-6	A	05-46	28 IR 3008	*CPH (28 IR 3322)
675 IAC 22-2.3-36.4	N	04-56	27 IR 2861	*CPH (28 IR 982) 28 IR 2371	710 IAC 1-22	N	05-81	28 IR 3009	*CPH (28 IR 3322)
675 IAC 22-2.3-36.6	N	04-56	27 IR 2863	*CPH (28 IR 982) 28 IR 2372	TITLE 760 DEPARTMENT OF INSURANCE				
675 IAC 22-2.3-36.8	N	04-56	27 IR 2863	*CPH (28 IR 982) 28 IR 2373	760 IAC 1-6.2-1	A	05-133	29 IR 1363	
675 IAC 22-2.3-140.5	N	04-56	27 IR 2863	*CPH (28 IR 982) 28 IR 2373	760 IAC 1-6.2-1.5	N	05-133	29 IR 1363	
675 IAC 22-2.3-147.5	N	04-56	27 IR 2863	*CPH (28 IR 982) 28 IR 2373	760 IAC 1-6.2-2	A	05-133	29 IR 1364	
675 IAC 22-2.3-147.6	N	04-56	27 IR 2863	*CPH (28 IR 982) 28 IR 2373	760 IAC 1-6.2-3	A	05-133	29 IR 1364	
675 IAC 22-2.3-148	A	04-56	27 IR 2864	*CPH (28 IR 982) 28 IR 2374	760 IAC 1-6.2-4	A	05-133	29 IR 1364	
675 IAC 22-2.3-148.5	N	04-56	27 IR 2864	*CPH (28 IR 982) 28 IR 2374	760 IAC 1-6.2-5	A	05-133	29 IR 1364	
675 IAC 22-2.3-227.1	N	05-127	29 IR 1360		760 IAC 1-6.2-6	A	05-133	29 IR 1365	
675 IAC 22-2.3-228.1	N	05-127	29 IR 1360		760 IAC 1-6.2-7	A	05-133	29 IR 1365	
675 IAC 22-2.3-232.1	N	05-127	29 IR 1360		760 IAC 1-6.2-8	A	05-133	29 IR 1365	
675 IAC 22-2.3-232.2	N	05-127	29 IR 1361		760 IAC 1-6.2-9	A	05-133	29 IR 1365	
675 IAC 22-2.3-232.3	N	05-127	29 IR 1361		760 IAC 1-6.2-10	A	05-133	29 IR 1365	
675 IAC 22-2.3-232.4	N	05-127	29 IR 1361		760 IAC 1-6.2-11	N	05-133	29 IR 1366	
675 IAC 22-2.3-232.5	N	05-127	29 IR 1361		760 IAC 1-6.2-12	N	05-133	29 IR 1367	
675 IAC 22-2.3-232.6	N	05-127	29 IR 1361		760 IAC 1-6.2-13	N	05-133	29 IR 1367	
675 IAC 22-2.3-233.1	N	05-127	29 IR 1361		760 IAC 1-6.2-14	N	05-133	29 IR 1367	
675 IAC 22-2.3-233.2	N	05-127	29 IR 1362		760 IAC 1-21-2	A	04-140	28 IR 1311	28 IR 2375
675 IAC 22-2.3-237.1	N	05-127	29 IR 1362		760 IAC 1-21-3	A	04-140	28 IR 1311	28 IR 2375
675 IAC 22-2.3-237.2	N	05-127	29 IR 1362		760 IAC 1-21-4	A	04-140	28 IR 1311	28 IR 2375
675 IAC 22-2.3-237.3	N	05-127	29 IR 1362		760 IAC 1-21-5	A	04-140	28 IR 1311	28 IR 2375
675 IAC 22-2.3-237.4	N	05-127	29 IR 1362		760 IAC 1-21-8	A	04-140	28 IR 1312	28 IR 2376
675 IAC 22-2.3-237.5	N	04-56	27 IR 2864	*CPH (28 IR 982) 28 IR 2374	760 IAC 1-21-10	N	04-140	28 IR 1313	28 IR 2376
675 IAC 22-2.3-298.5	N	04-56	27 IR 2864	*CPH (28 IR 982) 28 IR 2374	760 IAC 1-21-11	N	04-140	28 IR 1313	28 IR 2376
675 IAC 22-2.3-304.5	N	04-56	27 IR 2864	*CPH (28 IR 982) 28 IR 2374	760 IAC 1-50-3	A	04-139	27 IR 4136	28 IR 1482
675 IAC 25-1-3		02-118		*ERR (28 IR 1696)	760 IAC 1-50-4	A	04-139	27 IR 4136	28 IR 1482
675 IAC 25-1-7.2	N	04-218	28 IR 1310	*AROC (29 IR 147) 29 IR 12	760 IAC 1-50-5	A	04-139	27 IR 4137	28 IR 1483
675 IAC 25-1-7.4	N	04-218	28 IR 1310	*AROC (29 IR 147) 29 IR 12	760 IAC 1-50-6	RA	05-86		29 IR 896
675 IAC 25-1-7.6	N	04-218	28 IR 1310	*AROC (29 IR 147) 29 IR 12	760 IAC 1-50-9	RA	05-86		29 IR 896
675 IAC 25-1-9.1	N	04-218	28 IR 1310	*AROC (29 IR 147) 29 IR 12	760 IAC 1-50-10	RA	05-86		29 IR 896
675 IAC 25-1-9.3	N	04-218	28 IR 1310	*AROC (29 IR 147) 29 IR 12	760 IAC 1-50-11	RA	05-86		29 IR 896
675 IAC 25-1-9.5	N	04-218	28 IR 1310	*AROC (29 IR 147) 29 IR 12	760 IAC 1-60-1	RA	04-143	27 IR 3706	28 IR 1072
675 IAC 25-1-9.7	N	04-218	28 IR 1310	*AROC (29 IR 147) 29 IR 12	760 IAC 1-60-2	RA	04-143	27 IR 3706	28 IR 1072
675 IAC 25-1-9.9	N	04-218	28 IR 1310	*AROC (29 IR 147) 29 IR 12	760 IAC 1-60-4	RA	04-143	27 IR 3706	28 IR 1072
675 IAC 26	N	04-196	28 IR 1031	*CPH (28 IR 1498) *AROC (28 IR 2461) *ARR (29 IR 31) 29 IR 489	760 IAC 1-61	RA	05-86		29 IR 896
675 IAC 27	N	04-275	28 IR 1538	*AROC (29 IR 145) 29 IR 504	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

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760 IAC 2-3-4	A	03-303	27 IR 3309	28 IR 566	760 IAC 3-18-1	A	05-5	28 IR 2455	
760 IAC 2-3-6	A	03-303	27 IR 3310	28 IR 567				28 IR 3043	29 IR 546
760 IAC 2-3-7	N	03-303	27 IR 3310	28 IR 567					*ERR (29 IR 548)
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	TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS				
760 IAC 2-4-2	N	03-303	27 IR 3312	28 IR 569	804 IAC 1.1-1-1	A	04-156	28 IR 1054	28 IR 2377
				*ERR (28 IR 609)	804 IAC 1.1-8	N	04-156	28 IR 1055	28 IR 2378
760 IAC 2-7-1	A	03-303	27 IR 3313	28 IR 570	TITLE 808 STATE BOXING COMMISSION				
760 IAC 2-8-1	A	03-303	27 IR 3314	28 IR 570	808 IAC 1-3-6	A	03-226	27 IR 2563	28 IR 198
760 IAC 2-8-2	A	03-303	27 IR 3314	28 IR 571	808 IAC 1-5-1	A	03-226	27 IR 2563	28 IR 198
760 IAC 2-8-3	A	03-303	27 IR 3314	28 IR 571	808 IAC 1-5-2	A	03-226	27 IR 2563	28 IR 198
760 IAC 2-8-4	A	03-303	27 IR 3315	28 IR 572	808 IAC 2-1-5	A	03-226	27 IR 2564	28 IR 198
760 IAC 2-8-6	N	03-303	27 IR 3316	28 IR 572	808 IAC 2-1-12	A	03-226	27 IR 2564	28 IR 199
760 IAC 2-9-1	A	03-303	27 IR 3316	28 IR 572	808 IAC 2-7-14	A	03-226	27 IR 2564	28 IR 199
760 IAC 2-10-1	A	03-303	27 IR 3316	28 IR 573	808 IAC 2-8-7	R	03-226	27 IR 2566	28 IR 200
760 IAC 2-13-1	A	03-303	27 IR 3317	28 IR 573	808 IAC 2-9-5	A	03-226	27 IR 2564	28 IR 199
760 IAC 2-15-1	A	03-303	27 IR 3317	28 IR 574	808 IAC 2-12-0.5	N	03-227	27 IR 2566	*ARR (28 IR 215)
				*ERR (28 IR 609)					28 IR 201
760 IAC 2-15.5	N	03-303	27 IR 3319	28 IR 575	808 IAC 2-12-2	N	03-227	27 IR 2567	*ARR (28 IR 215)
760 IAC 2-16-1	A	03-303	27 IR 3320	28 IR 576					28 IR 201
760 IAC 2-16.1	N	03-303	27 IR 3320	28 IR 576	808 IAC 2-12-3	N	03-227	27 IR 2567	*ARR (28 IR 215)
760 IAC 2-17-1	A	03-303	27 IR 3323	28 IR 580					28 IR 201
760 IAC 2-18-1	A	03-303	27 IR 3325	28 IR 582	808 IAC 2-12-4	N	03-227	27 IR 2567	*ARR (28 IR 215)
760 IAC 2-19-2	A	03-303	27 IR 3325	28 IR 582					28 IR 201
760 IAC 2-19.5	N	03-303	27 IR 3325	28 IR 582	808 IAC 2-12-5	N	03-227	27 IR 2567	*ARR (28 IR 215)
760 IAC 2-20-10	A	03-303	27 IR 3329	28 IR 585					28 IR 202
760 IAC 2-20-31.1	A	03-303	27 IR 3329	28 IR 586	808 IAC 2-12-6	N	03-227	27 IR 2567	*ARR (28 IR 215)
760 IAC 2-20-34	A	03-303	27 IR 3329	28 IR 586					28 IR 202
760 IAC 2-20-35	A	03-303	27 IR 3332	28 IR 589	808 IAC 2-12-7	N	03-227	27 IR 2568	*ARR (28 IR 215)
760 IAC 2-20-36.1	A	03-303	27 IR 3332	28 IR 589					28 IR 202
760 IAC 2-20-36.2	A	03-303	27 IR 3333	28 IR 590	808 IAC 2-12-8	N	03-227	27 IR 2568	*ARR (28 IR 215)
760 IAC 2-20-37.2	A	03-303	27 IR 3334	28 IR 590	808 IAC 2-18-1	A	03-226	27 IR 2565	28 IR 199
760 IAC 2-20-37.3	N	03-303	27 IR 3334	28 IR 590	808 IAC 2-22-1	A	03-226	27 IR 2565	28 IR 199
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	TITLE 816 BOARD OF BARBER EXAMINERS				
760 IAC 3-1-1	A	05-5	28 IR 2426		816 IAC 1-2-11	A	05-146	29 IR 893	
			28 IR 3013	29 IR 517	816 IAC 1-3-1	R	05-146	29 IR 895	
760 IAC 3-2-2.5	A	05-5	28 IR 2426		816 IAC 1-3-4	A	05-146	29 IR 894	
			28 IR 3013	29 IR 517	816 IAC 1-3-6	A	05-146	29 IR 894	
760 IAC 3-2-6.1	A	05-5	28 IR 2426		816 IAC 1-4-1	A	05-146	29 IR 894	
			28 IR 3013	29 IR 517	816 IAC 1-5	N	05-146	29 IR 895	
760 IAC 3-2-6.2	A	05-5	28 IR 2426		TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS				
			28 IR 3013	29 IR 517	820 IAC 2-2-2	R	05-137	29 IR 656	
760 IAC 3-2-7	A	05-5	28 IR 2426		820 IAC 4-1-7	A	05-68	28 IR 3045	*AWR (28 IR 3584)
			28 IR 3014	29 IR 517	820 IAC 4-1-9	A	05-68	28 IR 3045	*AWR (28 IR 3584)
760 IAC 3-4-1	A	05-5	28 IR 2427		820 IAC 4-1-11	A	05-68	28 IR 3045	*AWR (28 IR 3584)
			28 IR 3014	29 IR 518	820 IAC 4-1-12	A	05-68	28 IR 3045	*AWR (28 IR 3584)
760 IAC 3-5-1	A	05-5	28 IR 2427		820 IAC 4-3-1	A	04-254	28 IR 1059	28 IR 2382
			28 IR 3014	29 IR 518	820 IAC 4-4-8	A	05-68	28 IR 3046	*AWR (28 IR 3584)
760 IAC 3-6-1	A	05-5	28 IR 2428		820 IAC 4-4-8.1	N	05-68	28 IR 3046	*AWR (28 IR 3584)
			28 IR 3016	29 IR 519	820 IAC 5-1-20	A	05-137	29 IR 654	
760 IAC 3-7-1	A	05-5	28 IR 2432		820 IAC 6-1-2	A	05-137	29 IR 654	
			28 IR 3019	29 IR 523	820 IAC 6-1-5	A	05-137	29 IR 655	
760 IAC 3-8-1	A	05-5	28 IR 2434		820 IAC 7	N	05-137	29 IR 655	
			28 IR 3021	29 IR 525	TITLE 828 STATE BOARD OF DENTISTRY				
760 IAC 3-9-1	A	05-5	28 IR 2437		828 IAC 0.5-2-3	A	04-233	28 IR 670	*AROC (28 IR 1073)
			28 IR 3024	29 IR 528					28 IR 2713
760 IAC 3-9-2	A	05-5	28 IR 2437						
			28 IR 3024	29 IR 528	828 IAC 0.5-2-4	A	05-226	29 IR 1371	
760 IAC 3-11-1	A	05-5	28 IR 2439						
			28 IR 3026	29 IR 530	828 IAC 1-1-1	A	05-226	29 IR 1371	
				*ERR (29 IR 548)	828 IAC 1-1-2	A	05-226	29 IR 1372	
760 IAC 3-12-1	A	05-5	28 IR 2444		828 IAC 1-1-3	A	05-226	29 IR 1372	
			28 IR 3031	29 IR 534	828 IAC 1-1-6	A	05-226	29 IR 1373	
760 IAC 3-14-1	A	05-5	28 IR 2445		828 IAC 1-1-7	A	05-226	29 IR 1373	
			28 IR 3032	29 IR 535	828 IAC 1-1-8	R	05-226	29 IR 1377	
760 IAC 3-15-1	A	05-5	28 IR 2453						
			28 IR 3040	29 IR 544					

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828 IAC 1-1-12	R	05-226	29 IR 1377	
828 IAC 1-1-21	R	05-226	29 IR 1377	
828 IAC 1-2-1	A	05-226	29 IR 1373	
828 IAC 1-2-2	A	05-226	29 IR 1374	
828 IAC 1-2-3	A	05-226	29 IR 1374	
828 IAC 1-2-6	A	05-226	29 IR 1375	
828 IAC 1-2-7	R	05-226	29 IR 1377	
828 IAC 1-2-8	R	05-226	29 IR 1377	
828 IAC 1-2-9	R	05-226	29 IR 1377	
828 IAC 1-2-12	R	05-226	29 IR 1377	
828 IAC 1-2-14	R	05-226	29 IR 1377	
828 IAC 1-3-1.1	A	05-226	29 IR 1375	
828 IAC 1-3-1.5	A	05-226	29 IR 1376	
828 IAC 1-3-2	A	05-226	29 IR 1377	
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
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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
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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	
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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 1.1-4.1-7	A	05-222	29 IR 1378	
864 IAC 1.1-4.1-8	A	05-222	29 IR 1378	
864 IAC 1.1-4.1-9	A	03-301		†28 IR 603
	A	05-222	29 IR 1379	
864 IAC 1.1-12-1	A	03-301	27 IR 2569	28 IR 604
864 IAC 1.1-12-2	N	03-301	27 IR 2570	28 IR 604

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TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS					865 IAC 1-12-16	R	05-82	29 IR 687	*CPH (29 IR 1244)
865 IAC 1-1-1	A	05-82	29 IR 660	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-12-17	R	05-82	29 IR 687	*CPH (29 IR 1244)
865 IAC 1-1-2	A	05-82	29 IR 661	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-12-18	A	05-82	29 IR 676	*CPH (29 IR 1244)
865 IAC 1-2-1	A	05-82	29 IR 661	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-12-19	R	05-82	29 IR 687	*CPH (29 IR 1244)
865 IAC 1-2-2	A	05-82	29 IR 663	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-12-20	A	05-82	29 IR 677	*CPH (29 IR 1244)
865 IAC 1-3-2	A	05-82	29 IR 663	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-12-21	A	05-82	29 IR 677	*CPH (29 IR 1244)
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				*AROC (29 IR 1383)	865 IAC 1-12-22	A	05-82	29 IR 678	*CPH (29 IR 1244)
865 IAC 1-4-6	A	05-82	29 IR 664	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-12-23	A	05-82	29 IR 679	*CPH (29 IR 1244)
865 IAC 1-4-7	A	05-82	29 IR 664	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-12-24	A	05-82	29 IR 679	*CPH (29 IR 1244)
865 IAC 1-4-8	A	05-82	29 IR 664	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-12-25	A	05-82	29 IR 680	*CPH (29 IR 1244)
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				*AROC (29 IR 1383)	865 IAC 1-12-26	R	05-82	29 IR 687	*CPH (29 IR 1244)
865 IAC 1-5-1	A	05-82	29 IR 665	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-12-27	A	05-82	29 IR 681	*CPH (29 IR 1244)
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				*AROC (29 IR 1383)	865 IAC 1-12-28	A	05-82	29 IR 681	*CPH (29 IR 1244)
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				*AROC (29 IR 1383)	865 IAC 1-12-29	A	05-82	29 IR 682	*CPH (29 IR 1244)
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				*AROC (29 IR 1383)	865 IAC 1-12-30	N	05-82	29 IR 682	*CPH (29 IR 1244)
865 IAC 1-7-3	A	05-82	29 IR 666	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-13-2	A	05-82	29 IR 684	*CPH (29 IR 1244)
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				*AROC (29 IR 1383)	865 IAC 1-13-5	A	05-82	29 IR 684	*CPH (29 IR 1244)
865 IAC 1-8-1	A	05-82	29 IR 667	*CPH (29 IR 1244)					*AROC (29 IR 1383)
				*AROC (29 IR 1383)	865 IAC 1-13-7	A	05-82	29 IR 685	*CPH (29 IR 1244)
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				*AROC (29 IR 1383)	865 IAC 1-14-15	A	05-82	29 IR 687	*CPH (29 IR 1244)
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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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		Examinations required by licensure 828 IAC 1-1-3	29 IR 1372		

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511 IAC 6-7-6.5			27 IR 2570			28 IR 2773		
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28 IR 1303			27 IR 2569			28 IR 996		
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511 IAC 6-7.1-4.5			864 IAC 1.1-14			Request for extension of time for filing pleading, document, or motion		
28 IR 1849			26 IR 3739			315 IAC 1-3-5		
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27 IR 2557			27 IR 2569			315 IAC 1-3-2.1		
28 IR 964			28 IR 603			28 IR 996		
28 IR 2199			ENVIRONMENTAL ADJUDICATION, OFFICE OF			28 IR 2775		
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28 IR 963			315 IAC 1-2-1			Indiana Code of Ethics for the Conduct of State Business		
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511 IAC 6.1-5.1-2			Conduct of hearing; separation of witnesses			40 IAC 2-1-6		
27 IR 2553			315 IAC 1-3-10			28 IR 987		
28 IR 960			28 IR 2778			28 IR 2160		
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511 IAC 6.1-5.1-5			Conduct of prehearing conference			Appearances; activities; expenses		
27 IR 2555			315 IAC 1-3-9			40 IAC 2-1-7		
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511 IAC 6.1-5.1-1			29 IR 474			28 IR 3453		
28 IR 2198			Continuances of prehearing conference, status conference, stay hearing, and hearing			Ethics education		
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511 IAC 6.1-5.1-11			28 IR 996			28 IR 987		
28 IR 2202			28 IR 2778			28 IR 2160		
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511 IAC 6.1-5.1-6			Defaults and dismissals			EXECUTIVE ORDERS		
27 IR 2555			315 IAC 1-3-7			(See Cumulative Table of Executive Orders and Attorney General's Opinions at 29 IR 1465)		
28 IR 962			28 IR 994			FAMILY RESOURCES, DIVISION OF		
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28 IR 960			Filing and service of pleadings and documents			470 IAC 3-18		
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28 IR 1379			28 IR 2777			"Assistant caregiver" defined		
28 IR 603			29 IR 474			470 IAC 3-1.1-2		
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29 IR 1378			28 IR 991			27 IR 2838		
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864 IAC 1.1-4.1-8			29 IR 470			470 IAC 3-1.1-35		
29 IR 1378			Petition for judicial review			27 IR 2846		
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470 IAC 3-1.1-36.5	27 IR 2846	470 IAC 3-1.1-20	27 IR 2840	High probability of development delay	
“Class I child care home” defined		Supervision		470 IAC 3.1-7-2	29 IR 107
470 IAC 3-1.1-7.2	27 IR 2838	470 IAC 3-1.1-36.6	27 IR 2846	Financial Administration	
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470 IAC 3-1.1-7.4	27 IR 2839	470 IAC 3-1.1-20.1	27 IR 2840	470 IAC 3.1-12-7	29 IR 108
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470 IAC 3-1.1-41	27 IR 2848	470 IAC 3-1.1-39	27 IR 2848	470 IAC 3.1-12-2	29 IR 108
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470 IAC 3-1.1-51	27 IR 2853	child care home		Child Complaints; Due Process Hearings	
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470 IAC 3-1.1-46	27 IR 2851	“Volunteer caregiver” defined		470 IAC 3.1-15-10	29 IR 109
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470 IAC 3-1.1-45	27 IR 2850	Class II Child Care Homes		Local planning and coordinating council	
Health		Application for Class II child care home		470 IAC 3.1-3-1	29 IR 105
470 IAC 3-1.1-44	27 IR 2849	license		Transition	
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470 IAC 3-1.1-41.2	27 IR 2848	Class II child care home capacity		470 IAC 3.1-11-2	29 IR 107
“Infant” defined		470 IAC 3-1.3-6	27 IR 2856	Service coordinator responsibilities	
470 IAC 3-1.1-10	27 IR 2839	“Class II child care home” defined		470 IAC 3.1-11-4	29 IR 107
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470 IAC 3-1.1-28	27 IR 2841	Class II child care home services		FAMILY AND SOCIAL SERVICES, OFFICE	
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470 IAC 3-1.1-12	27 IR 2839	Fire prevention and safety		LSA Document #05-337(E)	29 IR 1224
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470 IAC 3-1.1-29.5	27 IR 2842	Personnel requirements		Application and Enrollment; General Require-	
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470 IAC 3-1.1-34	27 IR 2845	Staff orientation, training, and development		Date of availability	
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470 IAC 3-1.1-44.5	27 IR 2850	Emergency or temporary closure of child care		405 IAC 6-3-3	27 IR 3210
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470 IAC 3-1.1-0.5	27 IR 2837	470 IAC 3-4.8	27 IR 1626		
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470 IAC 3-1.1-42	27 IR 2849	Infant and Toddler Services		Benefit defined by family income level	
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470 IAC 3-1.1-38.5	27 IR 2847	470 IAC 3-1.2-4	27 IR 2854	405 IAC 6-5-2	27 IR 3211
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470 IAC 3-1.1-45.5	27 IR 2850	470 IAC 3-1.2-3.2	27 IR 2853	Benefit duration	
Positive discipline		Diaper changing and toilet training		LSA Document #04-246(E)	28 IR 230
470 IAC 3-1.1-41.1	27 IR 2848	470 IAC 3-1.2-6	27 IR 2854	405 IAC 6-5-4	27 IR 3212
“Probationary license” defined		Feeding			28 IR 181
470 IAC 3-1.1-12.5	27 IR 2839	470 IAC 3-1.2-7	27 IR 2855	Benefit period	
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470 IAC 3-1.1-14	27 IR 2840	470 IAC 3-1.2-5	27 IR 2854	Benefits; program appropriations	
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470 IAC 3-1.1-32.1	27 IR 2843	470 IAC 3-1.2-3	27 IR 2853	405 IAC 6-5-6	27 IR 3212
“Relatives” defined		Sanitizing			28 IR 182
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470 IAC 3-1.1-29	27 IR 2842	FIRST STEPS EARLY INTERVENTION SYS-		405 IAC 6-5-1	27 IR 3211
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470 IAC 3-1.1-16	27 IR 2840	470 IAC 3.1-1-10	29 IR 104	LSA Document #04-246(E)	28 IR 230
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470 IAC 3-1.1-48	27 IR 2852	470 IAC 3.1-1-18	29 IR 104		28 IR 179
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470 IAC 3-1.1-47	27 IR 2852	470 IAC 3.1-1-25	29 IR 104	Drug Program Point of Service Drug Card	
School age child care services		“Qualified personnel” defined		405 IAC 6-10	29 IR 854
470 IAC 3-1.1-50	27 IR 2853	470 IAC 3.1-1-26	29 IR 104	Eligibility Requirements	
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470 IAC 3-1.1-33.5	27 IR 2845	Individualized services		LSA Document #04-246(E)	28 IR 230
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405 IAC 6-4-3	27 IR 3210	405 IAC 2-9-5	28 IR 1848	135 IAC 2-7-24	29 IR 612
	28 IR 180		29 IR 10	Assembly areas	
INDIANA PRESCRIPTION DRUG PROGRAM		MEDICAID SERVICES		135 IAC 2-7-15	29 IR 610
MEDICARE WRAPAROUND BENEFIT		Evaluation and Management Services		Assembly of LCV	
405 IAC 8	29 IR 856	Limitations		135 IAC 2-7-13	29 IR 610
MEDICAID PROVIDERS AND SERVICES		405 IAC 5-9-1	28 IR 261	Classification for toll collection purposes	
General Provisions			28 IR 2132	135 IAC 2-7-5	29 IR 608
Overpayments made to providers; recovery		General Provisions		Coupling devices	
405 IAC 1-1-5	28 IR 258	Global fee billing; codes		135 IAC 2-7-12	29 IR 609
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405 IAC 1-1-3.1	28 IR 2196	Medical Supplies and Equipment		Driver permits	
	28 IR 3579	Braces and orthopedic shoes		135 IAC 2-7-21	29 IR 611
Managed Care Provider Reimbursement Dispute Resolution		405 IAC 5-19-10	28 IR 262	Driver requirements	
405 IAC 1-1.6	27 IR 3699		28 IR 2134	135 IAC 2-7-20	29 IR 611
	28 IR 816	Medical supplies		Emergency equipment	
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405 IAC 1-5-1	28 IR 655	Nursing and Therapy Services		135 IAC 2-7-19	29 IR 611
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405 IAC 1-1.5-2	28 IR 259	Out-of-state services; general		135 IAC 2-7-11	29 IR 609
	28 IR 2131	405 IAC 5-5-1	29 IR 640	Minimum distances between LCV and other vehicles	
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405 IAC 1-1.5-1	27 IR 3699	Reimbursement for legend drugs		Passing	
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Limitation on Medicaid rate increases for HIV nursing facilities			29 IR 1212	135 IAC 2-7-1	29 IR 608
405 IAC 1-14.5-27	28 IR 3655	Reimbursement for nonlegend drugs		Police inspection	
	29 IR 1269	LSA Document #05-283(E)	29 IR 573	135 IAC 2-7-14	29 IR 609
Rate-Setting Criteria for Nonstate-Owned Intermediate Care Facilities for the Mentally Retarded and Community Residential Facilities for the Developmentally Disabled		405 IAC 5-24-5	28 IR 3653	Safety and performance requirements	
Limitation to Medicaid rate increases for nonstate-owned intermediate care facilities for the mentally retarded and community residential facilities for the developmentally disabled			29 IR 1212	135 IAC 2-7-6	29 IR 609
405 IAC 1-12-27	28 IR 3654	Podiatric Services		Speed limits	
Rate-Setting Criteria for Nursing Facilities		Prior authorization		135 IAC 2-7-16	29 IR 610
Limitation to Medicaid rate increases for nursing facilities		405 IAC 5-26-5	28 IR 262	Structural strength	
405 IAC 1-14.6-23	28 IR 3655		28 IR 2134	135 IAC 2-7-8	29 IR 609
	29 IR 1269	Prior Authorization		Temporary suspension of LCV permits	
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405 IAC 1-11.5-2	29 IR 637		28 IR 2132	135 IAC 2-7-3	29 IR 608
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405 IAC 2-3-10	27 IR 1210	Definitions		Lights and reflectors	
	28 IR 178	Definitions		135 IAC 2-8-11	29 IR 613
	28 IR 2196	135 IAC 2-1-1	29 IR 598	Permit required	
	28 IR 3579	Dimension and Weight Limitations; Special Hauling Permits		135 IAC 2-8-1	29 IR 612
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405 IAC 2-2-3	28 IR 1847	Dimensions requiring toll attendant authorization		135 IAC 2-8-3	29 IR 612
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		Special hauling permits		Entering traffic lanes	
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		Hitchhiking and loitering prohibited		135 IAC 2-2-1	29 IR 600
		135 IAC 2-3-2	29 IR 602	Stops at toll collection facilities	
		Pedestrians and certain vehicles prohibited		135 IAC 2-2-12	29 IR 601
		135 IAC 2-3-1	29 IR 602	Traffic control signals	
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				U-turns prohibited	
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135 IAC 2-5-1	29 IR 603				
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135 IAC 2-5-3	29 IR 607				
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135 IAC 2-5-2.1	29 IR 603				
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675 IAC 12-10-8	29 IR 1353				
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675 IAC 12-6-18	29 IR 1338				
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675 IAC 12-6-6	29 IR 1331				
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675 IAC 12-6-21	29 IR 1339				
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675 IAC 12-6-12	29 IR 1336				
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675 IAC 12-6-19	29 IR 1339				
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675 IAC 12-6-2	29 IR 1327				
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675 IAC 12-6-3	29 IR 1328				
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675 IAC 12-6-23	29 IR 1340				
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675 IAC 12-6-4	29 IR 1328				
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675 IAC 12-6-20	29 IR 1339				
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	28 IR 2707		
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27 IR 3111		Personnel		Permit conditions	
28 IR 529		410 IAC 16.2-3.1-14		410 IAC 6-12-11	
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68 IAC 5-3-2		"Dining assistant" defined		410 IAC 6-12-7	
27 IR 3109		410 IAC 16.2-1.1-19.3		27 IR 3213	
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305 IAC 1-5		Licenses		27 IR 3214	
27 IR 217		410 IAC 16.2-5-1.1		28 IR 820	
28 IR 13		27 IR 2539		Standards for issuance	
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305 IAC 1-2-6		410 IAC 16.2-5-1.4		28 IR 820	
27 IR 216		27 IR 2547		WOMEN, INFANTS, AND CHILDREN PROGRAM RULES, PENALTIES, AND SANCTIONS FOR WIC VENDORS	
28 IR 12		28 IR 193		410 IAC 3.6	
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27 IR 216		410 IAC 21-3-9		Certification, recertification, reinstatement, and in-service education requirements	
28 IR 12		28 IR 656		412 IAC 2-1-10	
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27 IR 217		REPORTING OF COMPLICATIONS FROM SURGICAL TREATMENT OF MORBID OBESITY		412 IAC 2-1-2.1	
28 IR 13		410 IAC 28		28 IR 3341	
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28 IR 12		"Absorption field" defined		28 IR 3342	
HEALTH, INDIANA STATE DEPARTMENT OF		410 IAC 6-12-1		29 IR 800	
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29 IR 1235		410 IAC 6-12-0.5		878 IAC	
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71 IAC 3-2-9	28 IR 2745	Acceptance of collateral for bail bond; collateral receipt required		Financial responsibility of hospital	
Paddock Judge		760 IAC 1-6.2-9		760 IAC 1-21-5	28 IR 1311
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71 IAC 3-4-1	28 IR 2746	760 IAC 1-6.2-12		Payment into patient's compensation fund; annual surcharge	
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71 IAC 3-11-1	28 IR 2746	Certificate of completion		Retention of deposit during liability	
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71 IAC 9-1-14	29 IR 830	760 IAC 1-6.2-13		Certificate of registration	
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71 IAC 7-3-36	28 IR 2751	Prelicensing and continuing education classes		Filings by multiple employer welfare arrangement	
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71 IAC 7-3-29	28 IR 2750	Receipts for receiving and returning collateral		Financial condition	
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71 IAC 7-3-18	28 IR 2750	Records must be kept; information required		Premium rates	
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71 IAC 7-3-13	28 IR 2750	Solicitation on bail agent's behalf by unlicensed person		Third party administrator	
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71 IAC 7-1-29	28 IR 2748	760 IAC 1-6.2-2		760 IAC 1-72	29 IR 649
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71 IAC 7-5-2	28 IR 2751	760 IAC 1-50-3			28 IR 571
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71 IAC 13.5-3-3	28 IR 2751	760 IAC 1-71		Life insurance policies	
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71 IAC 6-1-3	28 IR 2747	Health Maintenance Organization Plan for Continuation of Benefits in the Event of Receivership		760 IAC 2-8-3	27 IR 3314
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71 IAC 6-1-4	28 IR 2748	27 IR 2560		Questions	
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440 IAC 7.5-2-12	28 IR 661	LSA Document #04-258(E)	28 IR 615	LSA Document #05-211(E)	28 IR 3606
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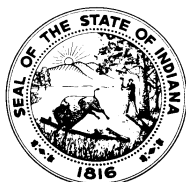
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