

MOBILE SUPPORT UNITS

A mobile support unit is a temporary response organization that may be formed and then activated by the Indiana Department of Homeland Security under IC 10-14-3-19. Mobile Support Units may be established either by the Governor or the IDHS Executive Director to respond to a disaster, public health emergency, public safety emergency or other event that requires emergency action. A Mobile Support Unit (MSU) may include governmental unit employees, private sector employees, and self-employed or unemployed individuals. Frequently, a mobile support unit is a specialized group such as a HAZMAT or EMS team, and can include firefighters, rescue specialists and paramedics.

This Mobile Support Unit Guidance document contains generalized information about Mobile Support Units. This includes a discussion of state statutes and the many legal issues and principles that are involved. This guidance is not intended to and does not contain legal advice to any person, jurisdiction or entity. Each person, jurisdiction or entity with legal questions about its participation in a mobile support unit should seek their own legal advice from their own attorney or the attorney for their jurisdiction or entity.

This guidance document is not written for the purpose of establishing operating procedures that are to be used as a basis of asserting liability against any of the participating agencies or entities. To the extent that it touches upon subjects that may be characterized as operating procedures, it contains certain statements of best practices. In many cases, the best practices contained within this document strive to exceed and improve upon prevailing standard practices. This guidance document is not intended to be relied on by any other individual, public or private or any agency which is not a participant in a Mobile Support Unit. This guidance document may not be used in a court of law to determine an applicable standard of care under any particular circumstances.

Required Steps to Activate a Mobile Support Unit:

1. The Indiana Governor or the IDHS Executive Director activates a Mobile Support Unit under IC 10-14-3-19 by signing an activation order. An example of an “Activation Order” is attached at Enclosure 1. The MSU Activation Order should contain the name of the commander, the specific duties of the MSU, and the expiration date of the activation. The Activation Order also contains a list of the

members of the unit, both those who are public employees and those who are not governmental (state or local) employees.

2. Unless the expenses of the MSU are to be funded by the IDHS operating account, approval to fund the MSU from the IDHS Contingency Fund is required prior to signing the activation order.
3. Upon appointment, the commander of the MSU is required to send each employer of a MSU member a “Notice to Employer of Employee Member of a Mobile Support Unit That May Be Activated In Accordance With IC 10-14-3-19”. An example is provided at Enclosure 2. The commander should also send the employers the “Mobile Support Unit Employer Record Keeping forms and Instructions.”
4. The commander of each MSU must require each MSU member to complete a “MOBILE SUPPORT UNIT MEMBER CHECKLIST.” An example is provided at Enclosure 3. The commander of each MSU must include each MSU member on a roster of MSU members. A spreadsheet form for this purpose is attached at Enclosure 5.
5. If the MSU is composed of employees of a single employer, IDHS **may** enter into an agreement with the Employer to describe the terms and conditions of the activation, the reimbursement process and the documentation requirements. An example of such an agreement that may be entered into between IDHS and a Political Subdivision is provided at Enclosure 4. This agreement is not a legal requirement, but it may be used when a single employer provides all MSU members for a particular activation, the employer requests it and the agreement can be completed, signed and fully approved prior to deployment of the Mobile Support Unit. Normally, that is very difficult due to the time factor.

Who May Activate a Mobile Support Unit?

Under IC 10-14-3-19 (a), only the Governor or the Executive Director of IDHS has the authority to activate a MSU.

Permissible Circumstances for Activation of Mobile Support Units:

Under IC 10-14-3-19, Mobile Support Units may be called to duty for training, an exercise, or a response to a disaster, public health emergency, public safety emergency or other event requiring emergency action. The Mobile Support Unit may be deployed to any part of Indiana or to other states (under the Emergency

Management Assistance compact (EMAC), upon the conditions specified in IC 10-14-3-19.

Composition:

MSUs may be organized at the county or District Task Force level, but only upon an activation by IDHS. If an MSU is an existing group, such as a HAZMAT or EMS team, they may operate out of a local fire department, hospital or other public safety facility. Each Mobile Support Unit has a commander appointed by the Executive Director of IDHS.

It is advisable to keep Mobile Support Units no larger than necessary and to minimize the number of private employers, volunteers or employment categories. The MSU commander's task of assisting employers with administrative and financial reimbursement issues will be greatly simplified by limiting the number of employers and the employment categories of unit members. A MSU with lots of members, lots of different employers, both public and private and several volunteers or unemployed members can easily become a considerable administrative burden for the Commander.

Mobile Support Unit Commander.

The Mobile Support Unit Commander has primary responsibility for the organization, administration, and operation of the unit. During the organization of the MSU, the commander of each MSU is responsible for requiring each unit member to complete a "Mobile Support Unit Member's Information Checklist." (See Enclosure 3) The Commander then completes a Roster of Mobile Support Unit Members and attaches it to the Activation Order. (See Enclosure 5)

Prior to deployment, the Mobile Support Unit Commander should complete the following actions:

1. Forward to each employer the IDHS document entitled: **Mobile Support Unit; EMPLOYER RECORD KEEPING FORMS AND INSTRUCTIONS.** This document details the record keeping requirements for the employers to be reimbursed for the compensation and expenses of their employees. The documentation requirements are designed to meet FEMA reimbursement criteria, in case the event is also a Presidential Declared Major Disaster.
2. Forward to each employer the IDHS Information Paper entitled: Indiana Auditor of State VINQ list. It details the things the Auditor of State requires

before the Auditor will send a check to a new vendor. This information is explained in greater detail in the Mobile Support Unit, Employer Record Keeping Forms and Instructions. The time required for the reimbursement process will be minimized if each employer is added to the State VINQ list, as an authorized vendor, prior to submitting a claim for reimbursement. In order for a new “vendor” to be paid, (to the Auditor of State, new employers are considered “vendors”) the Auditor of State requires the vendor to provide the ordering agency a Vendor Information Form, to add the employer to the State VINQ list as a new vendor. This process of entering a new employer into the Auditor’s VINQ list may take several weeks, so it should be done at the onset of the Mobile Support Unit’s formation and should not wait until the MSU has returned and the reimbursement forms are completed.

Following the completion of the mission, the commander must provide the MSU Member Information Checklist to IDHS, Response and Recovery Division in order to allow IDHS to audit invoices from employers after the event for reimbursement of employer paid compensation, expenses, damaged equipment, etc.

One of the commander’s most challenging duties will be working with the employers of each MSU member to support the employer’s effort to obtain reimbursement from IDHS following the expiration date of the MSU activation. That duty will entail making sure the documentation provided by the employer is complete and fully meets the published requirements of IDHS.

Permissible Limits of MSU Activation Orders:

The term of this duty shall be for a limited period of not more than sixty (60) days. The executive director may renew the duty orders for successive periods of not more than sixty (60) days if necessary for the mobile support unit to participate in or respond to the event. In most cases, IDHS hopes to limit the period of any individual’s term of duty to fourteen (14) calendar days. When the mission requires a longer presence, IDHS plans to rotate one MSU out and rotate another in to replace it.

Employment Status of Mobile Support Unit Members

The ideal candidates for Mobile Support Unit members are state employees and employees of political subdivisions of the state. Those persons typically enjoy the full range of employment benefits that are necessary to protect the MSU member from the various potential adverse effects of an MSU deployment, including the several effects of an injury, illness, disability, tort liability, termination of employment or

death. Certain private employers may provide similar benefits to their employees, making such an employee a good candidate to be an MSU member.

In Indiana, the term “political subdivision” means city, town, township, county, school corporation, library district, local housing authority, public transportation corporation, local building authority, local hospital or corporation, local airport authority or other separate local governmental entity that may sue and be sued.

If the MSU member is employed by the state or a political subdivision of the state, IC 10-14-3-19 (c) provides the individual has the same powers, duties, rights, privileges and immunities and shall receive the compensation and benefits incidental to the individual’s employment, whether serving within or outside the political subdivision.

If the MSU member is not employed by the state or a political subdivision of the state, IC 10-14-3-19 (c) (2) provides that the individual is still “entitled to the same rights and immunities that are provided for an employee of the state.”

If an MSU member is unemployed or is employed by a private firm that does not provide health insurance, life insurance, death or other benefits, the individual and or his survivors are not protected against those possible consequences of an MSU deployment. For that reason, such a person is not a good candidate to serve within a MSU.

MSU members who are either unemployed or self employed are treated as state employees only for purposes of some workers’ compensation benefits and protection from personal liability. These individuals are not eligible for the health insurance, dental insurance, life insurance, death benefits or other employer provided fringe benefits that are available to state employees. Mobile Support Unit members who are killed in the line of duty and who were acting as police officers, firefighters or “public safety officers” (as defined by IC 5-10-10-6) may be eligible for other death benefits based upon separate statutory entitlements. Some of the statutory death benefits which may be available are included within Enclosure 6, Statutory Provisions Governing Mobile Support Units.

Both employees of private organizations and governmental employees should serve as MSU members in a “present for duty status” with their employers, earning pay, overtime, and are paid directly by their employers. They also remain eligible for all employer provided protections and benefits. These employees should not be on a leave status with the employer, but should be in a regular working status. Otherwise, the employer is not entitled to reimbursement from IDHS for his or her wages. Being in a leave status will impair the employee’s rights to employer

provided workers compensation or death benefits, in the event of the individual's injury or death.

Volunteer Firefighter Participants in a Mobile Support Unit

A member of an Indiana volunteer fire department may serve as a member of a mobile support unit, but the individual's unique employment situation requires special pre-planning and coordination among the member, his or her employer, the VFD Chief and the Mobile Support Unit Commander. The member must deploy with the MSU as a member of his or her volunteer fire department. This requires the member to be directed to do so by the Volunteer Fire Department Chief or designee as an authorized mission of the volunteer fire department. The VFD Chief or designee must certify that the MSU member will be protected by the accident, injury, disease, disability and death benefit insurance policy of the Department mandated by IC 36-8-12-7.

IDHS policy prohibits the VFD member from participating as a member of a MSU in an on-duty status under the member's regular employment. In that status, the member's entitlement to insurance protection provided by the VFD would not be available. Such an arrangement also might impair the member's family's ability to receive statutory death benefits that are paid to the families of firefighters killed in the line of duty.

Volunteer Firefighter Department members may receive a stipend from the State when participating in a Mobile Support Unit. The stipend for volunteer firefighters is \$19.82 per hour for each hour of the individual's duty shift. The shifts for volunteer firefighters during a Mobile Support Unit must be approved by the Mobile Support Unit Commander, after consultation with the Incident Commander and the Executive Director of the Indiana Department of Homeland Security. Hourly pay stipends may include actual travel time to or from the scene, but shall not include pay for sleep, rest or recreation periods.

It will be the responsibility of the MSU Commander to record all hours for which stipends are to be paid by IDHS to members of a VFD on the Force Account Labor Summary Record. After the payments are made to the individuals, IDHS will provide a 1099 form to each participant who receives \$600.00 or more. It is then the responsibility of the firefighter to report the amounts paid to them as income to the IRS, whether the individual receives a 1099 or not.

The VFD Chief also will be required to adopt a pay policy under which VFD members will be compensated directly by IDHS for service on a Mobile Support Unit,

with the VFD Chief submitting a collective request for the payment of stipends and the reimbursement of travel expenses for all of the firefighters who served as members of the MSU, as if the VFD were an employer. The pay policy must contain the following elements:

1. The department shall establish a written policy applicable to VFD members who desire to serve as a MSU member. The written policy must require that the volunteer have health insurance. The written policy shall require the volunteer to complete the time and labor documentation required for payment of the stipend. Since the payment of the stipend is made directly to the individual, the policy will require each individual to complete the Auditor of the State of Indiana's requirements to be added to the Auditor's VINQ list. As a condition receiving reimbursement for travel expenses from IDHS, the policy shall require the volunteer to complete the documentation required for the payment of reimbursement of travel expenses.

2. The VFD shall also have a written activation protocol that includes call out procedures, authorization procedures for activation, accountability for personnel, and documentation of time and travel expenses. The pay policy and activation protocol shall be in effect prior to a member of the VFD being deployed on a Mobile Support Unit.

Employers of Mobile Support Unit Members:

Employers receive a "Notice to Employer of Employee Member of a Mobile Support Unit That May Be Activated In Accordance With IC 10-14-3-19". The notice explains that, if activated, the employee is an "emergency management worker" for purposes of tort immunity and that the state may reimburse the employer for compensation and expenses. The Mobile Support Unit statute does not permit IDHS to reimburse the employer's costs of "back-filling." However, it does authorize IDHS to reimburse the employer for the salary and fringe benefits of the MSU member who is deployed, including overtime.

The only expenses for which MSU members or their employers may be reimbursed are those that are reasonable and necessary and are incurred while the MSU is activated.

All records must be kept for 3 years after reimbursement. The employer should keep a copy of all documents submitted for reimbursement in a single file assembled under the Mobile Support Unit Activation number.

Mobile Supports Units – Reimbursement Procedures

In order to be reimbursed for the allowable expenses of their employee(s), employers must provide a copy of several documents including:

1. The Employer's Payroll and Overtime Policy.
2. The Employer's payroll register/payroll stubs.
3. The actual receipts for any lodging, travel or maintenance costs that they paid for their employees.
4. A Vendor's Information Form. This form is required by the Indiana Auditor of State in order for the state to reimburse the employer.
5. A Travel Voucher from each MSU member. An unemployed MSU member or a self-employed member may submit the form directly to IDHS for reimbursement. An employed MSU member will submit this form to his or her employer upon the end of the MSU deployment. The employer will reimburse the employee for his or her travel costs. The employer will then provide both this form and proof of payment to the employee to IDHS as documentation in support of the employer's claim for reimbursement by IDHS. Actual invoices for meals need not be provided. Instead, employers will be reimbursed for meal costs incurred based on the amount paid to Indiana State employees when traveling (\$26.00 within Indiana and \$32.00 for out of state travel.)
6. The employer's personnel costs must be provided to IDHS on a weekly **IDHS Force Account Labor Summary Record**, or on a similar local report that will provide the same information. Each employee must be described by name, job title, hourly pay rate, and overtime eligibility for each hour worked. Hours worked as a member of the mobile support unit must be shown for each day for which reimbursement is sought.
7. Under IC 10-14-3-19, the state may reimburse the employer for all uninsured losses of or damage to supplies and equipment incurred while the employee was serving as a member of an activated mobile support unit. However, losses of or damage to personal convenience property, such as a person's luggage, toiletries, clothing, eye glasses, iPod, cell phone etc. is not reimbursable. The individual MSU member is personally responsible for his or her personal property at all times. If it is lost, stolen or

damaged, the individual is not authorized to make a claim for reimbursement.

8. The costs of Mobile Support Units are reimbursable by FEMA if it was activated for Public Assistance in response to a Presidential Public Assistance Declaration. Accordingly, IDHS has elected to use FEMA forms for all Mobile Support Unit activations. Reimbursements will be based on FEMA guidelines, using current FEMA reimbursement rates, whether or not a Presidential Declaration is made. The FEMA Schedule of Equipment Rates may be found at: <http://www.fema.gov/government/grant/pa/eqrates.shtm>

Under both FEMA and EMAC reimbursement criteria, employer expenses may be reimbursed only where there is documentation that the money was actually spent. Without appropriate documentation of payment, IDHS will not be able to reimburse the employer.

In order to seek reimbursement, each employer which has an employee who participates in the deployment of a Mobile Support Unit must submit an invoice together with the documentation identified above to:

Indiana Department of Homeland Security
ATTN: Response and Recovery Division, Room W046
302 W. Washington Street
Indianapolis, IN 46204

The invoice must be received by the IDHS Response and Recovery Division within 60 days of the last day of such deployment. The invoice must be accompanied by the documentation described above.

Travel Costs: The Travel Voucher will be used to review and approve employer claims for travel costs. The Travel Voucher must be supported with copies of paid receipts for air fare, ground transportation, parking, mileage for personnel vehicles, and lodging. IDHS will not require receipts for meals. All other receipts must be attached. Meal costs will be reimbursed at the current Per Diem rate used by the State of Indiana to reimburse for the reasonable and necessary cost of meals. Per Diem for meals or lodging cannot be reimbursed for those expenses or nights of lodging which were provided without cost to Mobile Support Unit members by IDHS, FEMA or other entities.

Maintenance expenses: Maintenance expenses include any expenses incurred in maintaining and repairing the equipment used by the MSU members in carrying

out their duties. All maintenance expenses must be fully explained and supported with copies of paid receipts. Reimbursement is limited to expenses which are clearly related to the mission. These other costs should be explained in a separate attachment. The purchase or rental of equipment can only be reimbursed by IDHS if authorized in advance by IDHS. Use costs of existing equipment cannot be reimbursed. Only equipment costs that are deemed required and/or necessary, in the sole judgment of IDHS, are reimbursable.

Use of vehicles: Any claim for use of a vehicle must be supported by a mileage log showing the beginning and ending odometer readings by each vehicle. The mileage that is reimbursed will be determined based upon the amount of reimbursement allowed by FEMA for the type vehicle used. (i.e. auto, police auto, boat, etc.) The amount to be reimbursed for vehicle use will be adjusted if IDHS provides fuel to MSU participants. IDHS will provide fuel or pay for mileage, not both.

Forms: The following forms can be found by visiting the Accounts Payable page of the IDHS website: <http://www.in.gov/dhs/2435.htm>

- Vendor Information Form. This form is used to set up employers of MSU members and either unemployed or self-employed MSU members into the Auditor of State's vendor system. The Auditor requires this form in order to make a payment or reimbursement of any kind to a person, company or government entity.
- Force Account Equipment Summary Record. This form is used to record equipment used and the costs.
- Force Account Labor Summary Record. This form is used to record personnel costs.
- Rented Equipment Summary Record. This form is used to record the costs of rented or leased equipment.
- Materials Summary Record. This form is used to record the supplies and materials that are taken out of stock or purchased.
- Fringe Benefit Rate Sheet. This form is used to record benefit costs of each employee.
- Travel Voucher. This form is used by an individual (unemployed, self-employed, employed) MSU members who seek compensation for travel

expenses. An unemployed MSU member or a self-employed member may submit the form directly to IDHS for reimbursement. An employed MSU member will submit this form to his or her employer upon the end of the MSU deployment. The employer will reimburse the employee for his or her travel costs. The employer will then provide both this form and proof of payment to the employee to IDHS as documentation in support of the employer's claim for reimbursement by IDHS.

Mobile Support Unit Members:

MSU Membership Status. It is important to pinpoint the precise day and time that MSU membership status begins and ends in order to calculate the state's reimbursement obligation to the member's employer. This timing issue is also important in the event the member is injured in an accident either on the way to or when returning from an MSU mission.

Once a Mobile Support Activation Order is signed and the member's name is listed on the roster which is attached, the MSU member's status begins when the MSU member reports to his or her designated Mobilization Station, plus up to three (3) hours of travel and preparation time. The MSU member's status ends when the MSU member departs the MSU demobilization station, plus up to three (3) hours of travel time. The individual member records this information on his or her travel voucher submitted for reimbursement following the completion of the MSU mission. The individual's employer records this information on the Force Account Labor Summary Record, which is used to record the employer's personnel costs for which reimbursement is sought.

In order to expedite the payment of invoices from employers, the MSU Commander or his or her designee may be continued on MSU member status, after the completion of the demobilization process, for up to three (3) days of additional time. The amount of time will vary depending upon the length and complexity of the MSU. The amount of authorized additional time will be determined by the IDHS Executive Director, after consulting with the MSU Commander, to complete necessary reports, documents and to assist employers with the prompt reimbursement of their invoices.

Employment Protection. Under IC 10-14-3-19 (a), members serving on the mobile support units are immune from discipline or termination by the members' employers for serving in the units. This means that a disciplinary action that was based on the employee's absence for MSU duty is unlawful. Unfortunately, the law does not provide an enforcement tool, so if an employer does take action against the employee, the employee will likely have to take the employer to court, at his or her own expense, unless the employer has an internal grievance or appeal procedure.

The employee will also have the burden of proving the disciplinary action or termination was the employer's predominant motive for the employment action. Unlike civil rights statutes or the Uniformed Employment and Reemployment Rights Act (which protects military members from the employer's wrath), there is little guidance and no government agency whose mission is to assist MSU members with employment disputes. Disputes with employers are likely to occur unless the employer consents to the member's participation. Employees of private employers who proceed with MSU membership and activations despite the objections of their supervisors at work are at greater risk than employees of the State or a political subdivision. Under, IC 10-14-3-19 (h), a state employee who refuses to accept or to perform duties in a MSU commits a violation of state law and the refusal constitutes grounds for dismissal from state employment.

Insurance Policies

Each employer of a MSU participant will have to decide whether they are able to participate. Insurance coverage is certainly an important factor in that decision. It is recommended that each entity sit down with its insurers, express its desired coverage and make sure they know what their coverage does and does not do, before they agree to participate.

If the personal property used in a mobile support unit's response (such as equipment) is lost or damaged, the state will reimburse the owner for the uninsured amount of the employers' loss. Personal convenience property, such as an MSU member's luggage, toiletries, clothing, eye glasses, iPod, cell phone etc. is different. IDHS guidance makes it clear that the individual MSU member is personally responsible for his or her personal property. If it is lost, stolen or damaged, the individual is not authorized to make a claim for reimbursement.

Workers Compensation:

Indiana's worker's compensation law applies only to Indiana employers. Likewise, Indiana's mobile support law applies only to Indiana employers. Therefore, persons who are employed by an employer from another state are not allowable candidates to serve on an Indiana Mobile Support Unit.

For the Indiana Worker's Compensation law to apply, the legal relation of employee and employer must exist. That relationship is contractual in nature. A key issue under Indiana Worker's Compensation law is whether an injury to an employee arose "out of and in the course of the employment." That is a factual issue that will depend upon the circumstances of the particular individual and of his or her accident

or injury. Obviously, an accident or injury cannot arise out of and in the course of the employment unless the employer is aware of the mission and has given its express assent to the employee's participation in an "on duty and working" status. A mobile support unit, by its very nature, involves the employee traveling to a location that is apart from the employer's ordinary place of business and doing a task that is often unrelated to the employer's business. An accident involving a traveling employee arises "out of" his employment as long as the employee is at the place the accident occurs because of his employment. That requires the employer to not only to assent to but to direct the employee to participate in the mobile support unit.

Under IC 36-8-12-10, volunteer firefighters and emergency medical technicians working for a volunteer fire company or ambulance company must be covered by the medical treatment and death benefit portions of the Worker's Compensation and Occupational Diseases Acts. Compensation for lost wages and impairment is not covered. Any dispute as to compensability may be resolved by the Worker's Compensation Board through its hearing process. All expenses incurred for premiums of the insurance allowed under IC 36-8-12-10 may be paid from the unit's general fund.

Other than volunteer firefighters, MSU members who are employed need to remain in an employment status with their employers in order to be able to make a claim for workers' compensation for any accident or injury taking place during a deployment as a MSU member. That means they need to be in a working status, rather than in a leave or vacation status.

Under IC 10-14-3-15, unemployed or self employed persons working as volunteers as Mobile Support Unit members may be covered by the medical treatment and burial expense provisions of the state's workers' compensation law (IC 22-3-2 through 22-3-6 and the worker's occupational diseases law (IC 22-3-7). Such persons are not covered by the disability or lost wages provisions of these statutes.

For purposes of the Indiana Worker's Compensation Act, all types of employment relationships may be divided into three categories:

1. Employment that *must* be covered by workers' compensation.
2. Employment that *is not* covered by workers' compensation.
3. Employment that *is not* automatically covered, but which *may* be covered at the option of the employer. In some cases the consent of the employee is required.

The Worker's Compensation Board may be notified of the employer's election of optional coverage by filing an Election of Coverage Form. Of particular interest to Mobile Support Units are:

1. *Local police officers and firefighters.* The Worker's Compensation Act does not apply to municipal employees if:
 - a) they are members of municipal police or fire departments, and
 - b) they are members of a police or firefighter's pension fund.

However, the municipal council may elect to bring such employees within the *medical* provisions of the Act (disability and impairment compensation would not be covered). See IC 22-3-2-2(c).

If the medical benefits provided under workers' compensation terminate *for any reason* before the police officer or firefighter is fully recovered, the municipal council must provide necessary medical treatment until the employee is no longer in need of such treatment. See IC 22-3-2-2(e). Local police officers or fire fighters covered by a medical-only worker's compensation policy should contact their benefits coordinator or the local clerk or treasurer for more information on coverage.

Other benefits *may* be available to injured police officers and firefighters outside of the Worker's Compensation Act. IC 36-8-4-5(a) provides the following care to police officers and firefighters who are injured or made ill by the performance of their duties: medical and surgical care; medicines, laboratory, curative and palliative agents and means; X-ray, diagnostic, and therapeutic service including during the recovery period; and hospital and special nursing care if the physician or surgeon in charge considers it necessary for proper recovery. However, that the Worker's Compensation Board has no jurisdiction over medical benefits payable pursuant to IC 36-8-4-5(a).

2. *Reserve Police Officers* as defined by Ind. Code 36-8-3-20 may be covered by the medical treatment and burial expense provisions of the Worker's Compensation Act. The administrative procedures of the Act apply if compensability of the injury is an issue. See IC 36-8-3-20(j).
3. *Volunteers working for hazardous materials response team.* These workers may be covered by the medical benefit and burial expense provisions of the Act at the option of the employer and employee. See IC 36-8-12-10.
4. *Rostered Volunteers.* A volunteer whose name has been entered and approved on a county, municipal, or township roster of volunteers for volunteer programs operated by the county, municipality, or township may be covered at the option of

the governmental unit by the medical-only provisions of the Act. Lost wage and impairment compensation would not be covered. See IC 22-3-2-2.1.

Health Insurance. MSU members should have health insurance in order to have a way to pay for medical care for any illness occurring while on this deployment. MSU members who are not state employees are not covered by any state health insurance program or policy.

Life Insurance/Disability Insurance. MSU members who are not state employees are not covered by any state life insurance or disability insurance program or policy.

Protection from Tort Liability.

Issues of tort liability will always depend upon the actual factual circumstances giving rise to a particular injury or damage. The ultimate issue of whether a particular person or entity is liable to an injured party will always depend upon the facts. No general statement or discussion of the subject within a guidance document such as this can possibly anticipate all the circumstances or address all the questions that are involved. The following discussion merely identifies one statute of particular importance to Mobile Support Unit participants.

IC 10-14-3-15 creates a broad grant of immunity for the state and its political subdivisions when “complying with or reasonably attempting to comply with IC 10-14-3, Indiana’s “Emergency Management and Disaster Law.” IC 10-14-3-15 also grants limited immunity to any emergency management worker “complying with or reasonably attempting to comply with IC 10-14-3 or any order or rule adopted under this chapter or under any ordinance related to blackout or other precautionary measures enacted by any political subdivision of the state.” Such an emergency management worker is not liable for the death of or injury to persons or for damage to property as a result of any such activity, except in cases of willful misconduct, gross negligence or bad faith. An individual MSU member is considered an “emergency management worker” for the purposes of the grant of limited immunity provided to such persons in IC 10-14-3-15. Therefore, except in cases of willful misconduct, gross negligence or bad faith, an emergency management worker complying with or reasonably attempting to comply with Indiana Emergency Management Law is not liable for the death of or injury to persons or for damage to property as a result of any such activity. Under the legal doctrine of *respondeat superior*, the employer of an emergency management worker’s liability is derived from the liability of the employee. If the employee is not liable due to the application of the legislative grant of limited immunity, the employer is not liable either.

A summary of the Indiana statutes governing Mobile Support Units is provided at Enclosure 6.

Enclosure 1, Activation Order

**ACTIVATION OF MOBILE SUPPORT UNIT IN
ACCORDANCE WITH IC 10-14-3-19
ACTIVATION NUMBER _____**

I, JOSEPH E. WAINSCOTT, JR., AS EXECUTIVE DIRECTOR OF THE INDIANA DEPARTMENT OF HOMELAND SECURITY, DO HEREBY ACTIVATE THE **[INSERT NAME OF MSU]** AS FOLLOWS:

1. The Mobile Support Unit shall perform the following duties (“Duties”) under the command of **[insert name of commander]**:

a. [List duties]

2. The Mobile Support Unit shall consist of the individuals on the roster which is attached hereto and made a part hereof as Exhibit 1. This roster may only be changed when the Mobile Support Unit Commander creates, signs and dates an amended roster which is then approved in writing by the IDHS Executive Director. The commander **will** obtain a completed and signed checklist from each Mobile Support Unit member. The commander will send a Notice to the employer of each Mobile Support Unit Member. This notice will inform the employer of this activation order and will describe the reimbursement procedures under which the employer may seek reimbursement from IDHS for the salary of the unit member and his or her other allowable expenses.

3. Under IC 10-14-3-15, each member of the Mobile Support Unit is considered to be a state emergency management worker, while remaining in a paid duty status for the individual’s employer.

4. The [MSU] shall perform the Duties from the date hereof until **[insert expiration date]**.

5. Reimbursement by IDHS of employers or self-employed individuals shall be in accordance with IC 10-14-3-19 (f) and (g) below:

(f) The state may reimburse a political subdivision for:

(1) the compensation paid and actual and necessary travel,

subsistence, and maintenance expenses of an employee of the political subdivision while the employee is serving as an activated member of a mobile support unit;

(2) all payments for death, disability, or injury of an employee incurred in the course of duty while the employee was serving as a member of a mobile support unit; and

(3) all losses of or damage to supplies and equipment of the political subdivision or the employee incurred while the employee was serving as a member of an activated mobile support unit. (Losses of or damage to personal convenience property, such as a person's luggage, toiletries, clothing, eye glasses, iPod, cell phone etc. is not reimbursable. The individual MSU member is personally responsible for his or her personal property at all times. If it is lost, stolen or damaged, the individual is not authorized to make a claim for reimbursement.)

(g) For an individual of a mobile support unit who is **not an employee of the state or a political subdivision**, the state may:

(1) compensate the individual:

(A) at a rate of pay approved by the executive director;

(B) by reimbursing the individual for the actual and necessary:

(i) travel;

(ii) subsistence; and

(iii) maintenance;

expenses of the individual of the mobile support unit incurred while the individual is on duty as an activated a member of a mobile support unit; and

(C) for all losses of or damage to supplies and equipment of the individual incurred while the individual is on duty as a member of a mobile support unit (Losses of or damage to personal convenience property, such as a person's luggage, toiletries, clothing, eye glasses, iPod, cell phone etc. is not reimbursable. The individual MSU member is personally responsible for his or her personal property at all times. If it is lost, stolen or damaged, the individual is not authorized to make a claim for reimbursement.)

; or

(2) reimburse the individual's employer for:

(A) the compensation paid and the actual and necessary:

(i) travel;

(ii) subsistence; and

(iii) maintenance;

expenses of the employee while the employee is on duty as a member of an activated mobile support unit;

(B) all payments for:

- (i) death;
- (ii) disability; or
- (iii) injury;

of the employee while the employee was on duty as a member of an activated mobile support unit; and

(C) all losses of or damage to supplies and equipment of the employer or the employee incurred in the course of duty while the employee was on duty as a member of an activated mobile support unit. (Losses of or damage to personal convenience property, such as a person's luggage, toiletries, clothing, eye glasses, iPod, cell phone etc. is not reimbursable. The individual MSU member is personally responsible for his or her personal property at all times. If it is lost, stolen or damaged, the individual is not authorized to make a claim for reimbursement.)

SIGNED THIS ____ DAY OF _____, 20__

Joseph E. Wainscott, Jr.

Executive Director

Indiana Department of Homeland Security

Enclosure 2

NOTICE TO EMPLOYER OF EMPLOYEE MEMBER OF A MOBILE SUPPORT UNIT THAT MAY BE ACTIVATED IN ACCORDANCE WITH IC 10-14-3-19

Under the provisions of IC 10-14-3-19, the Executive Director of the Indiana Department of Homeland Security has the authority to activate one or more mobile support units to respond to a disaster, public health emergency, public safety emergency, or other event that requires emergency action. One or more of your employees has volunteered to be a member of a mobile support unit to provide fire, law enforcement, hazardous materials, emergency medical or other essential response services.

While serving as a member of a mobile support unit ("MSU"), your employee is an emergency management worker as provided in IC 10-14-3-15. Under that statute, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker complying with or reasonably attempting to comply with [IC10-14-3] or any order or rule adopted under [IC 10-14-3], or under any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, is not liable for the death of or injury to persons or for damage to property as a result of any such activity.

In addition, under IC 10-14-3-19, the follow reimbursement of employers or self-employed individuals is permitted:

(f) The state may reimburse a political subdivision for:

(1) the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of an employee of the political subdivision while the employee is serving as a member of an activated mobile support unit;

(2) all payments for death, disability, or injury of an employee incurred in the course of duty while the employee was serving as a member of an activated mobile support unit; and

(3) all uninsured losses of or damage to supplies and equipment of the political subdivision or the employee incurred while the employee was serving as a member of an activated mobile support unit. (Losses of or damage to personal convenience property, such as a person's luggage, toiletries, clothing, eye glasses, iPod, cell phone etc. is not reimbursable. The individual MSU member is

personally responsible for his or her personal property at all times. If it is lost, stolen or damaged, the individual is not authorized to make a claim for reimbursement.)

(g) For an individual of a mobile support unit who is not an employee of the state or a political subdivision, the state may:

(1) compensate the individual:

(A) at a rate of pay approved by the executive director;

(B) by reimbursing the individual for the actual and necessary:

(i) travel;

(ii) subsistence; and

(iii) maintenance;

expenses of the individual of the mobile support unit incurred while the individual is on duty as a member of a mobile support unit; and

(C) for all uninsured losses of or damage to supplies and equipment of the individual incurred while the individual is on duty as a member of an activated mobile support unit, other than personal convenience property, such as a person's luggage, toiletries, clothing, eye glasses, iPod, cell phone etc. The individual MSU member is personally responsible for his or her personal property at all times. If it is lost, stolen or damaged, the individual is not authorized to make a claim for reimbursement.

or

(2) reimburse the individual's employer for:

(A) the compensation paid and the actual and necessary:

(i) travel;

(ii) subsistence; and

(iii) maintenance;

expenses of the employee while the employee is on duty as a member of an activated mobile support unit;

(B) all payments for:

(i) death;

(ii) disability; or

(iii) injury;

of the employee while the employee was on duty as a member of an activated mobile support unit; and

(C) all uninsured losses of or damage to supplies and equipment of the employer or the employee incurred in the course of duty while the employee was on duty as a member of an activated mobile support unit, other than personal

convenience property, such as a person's luggage, toiletries, clothing, eye glasses, iPod, cell phone etc. The individual MSU member is personally responsible for his or her personal property at all times. If it is lost, stolen or damaged, the individual is not authorized to make a claim for reimbursement.

Enclosure 3

MOBILE SUPPORT UNIT MEMBER CHECKLIST

1. Name _____

2. Address: _____

3. Telephone: _____

4. Email Address: _____

2. Employment status (check one)

a. Unemployed _____

b. Self-employed _____

c. Employed _____

3. If employed, provide name, address and contact person of employer.

Employer's name: _____

Employer's Mailing Address: _____

Employer's contact person: _____

Contact person's phone number: _____

Contact person's email: _____

5. If employed –

Hourly wage _____

or weekly salary _____

or monthly salary _____

4. Personal supplies and equipment with which the individual is responding.

(Attach list if required)

(IDHS will not reimburse the MSU member for lost or damaged items)

5. Employer provided supplies and equipment with which the individual is responding

(Attach list if required)

Date Completed: _____

Completed by: _____

6. Health Insurance Card. (Individual MSU member should carry it and provide a photo copy to the MSU Commander)

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Enclosure 4. Sample Mobile Support Unit Employee Interchange Agreement

INDIANA DEPARTMENT OF HOMELAND SECURITY

MOBILE SUPPORT UNIT DEPLOYMENT

EMPLOYEE INTERCHANGE AGREEMENT

This Agreement is entered into by and between _____ (a political subdivision of the State of Indiana—hereinafter referred to as the “Political Subdivision”) and the Indiana Department of Homeland Security (hereinafter referred to as the “IDHS”) for the services of the employees of the political subdivision identified on Exhibit A, attached and fully incorporated herein (hereinafter referred to “Indiana Mobile Support Unit Member”) to fulfill the duties of a member of an Indiana Mobile Support Unit.

WITNESSETH:

Whereas, The Executive Director of the IDHS is authorized and empowered to establish one or more mobile support units pursuant to Executive Order 05-09 and IC 10-14-3-19 to engage in response and recovery operations, and

Whereas, Under the authority of IC 5-10-7, the political subdivision has agreed to detail the Indiana Mobile Support Unit Member to serve as a member of the Indiana Mobile Support Unit, if and when the Mobile Support Unit is activated.

NOW THEREFORE, the parties agree:

1. The Indiana Mobile Support Unit Members will serve as members of the Indiana Mobile Support Unit.
2. The term of the deployment of the Indiana Mobile Support Unit Members shall not exceed sixty (60) days.

3. While serving as a member of the Indiana Mobile Support Unit, each Indiana Mobile Support Unit Member will be considered on detail from the Political Subdivision to the IDHS.
4. Pursuant to IC 10-14-3-19(c), the Indiana Mobile Support Unit Members shall be entitled to the same salary and benefits to which they would otherwise be entitled and shall remain employees of the Political Subdivision for all other purposes except that the Executive Director of the IDHS and the Executive Director's designees shall supervise the duties of the Indiana Mobile Support Unit Members during the period of detail.
5. If a Indiana Mobile Support Unit Member suffers disability or death as a result of personal injury arising out of and in the course of such assignment or sustained in the performance of duties in connection therewith the Indiana Mobile Support Unit Member shall be treated for the purpose of Political Subdivision's employee compensation program as an employee, as defined in such statute, who has sustained such injury in the performance of such duty.
6. No claim by any person or other entity, including without limitation an Indiana Mobile Support Unit Member, for death, injury, illness or loss of compensation occurring with respect to an Indiana Mobile Support Unit member while on deployment or as a result of deployment with a mobile support unit may be made against the State of Indiana or any of its agencies, instrumentalities, elected or appointed officials or employees.
7. The Department shall reimburse the Political Subdivision for:
 - (A) the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of the Indiana Mobile Support Unit Members while the Members are serving as members of an activated mobile support unit;
 - (B) all payments for death, disability, or injury of an employee incurred in the course of duty while the Indiana Mobile Support Unit Members are serving as members of an activated mobile support; and
 - (C) all uninsured losses of or damage to supplies and equipment of the political subdivision or the Indiana Mobile Support Unit Members while the Members are serving as members of an activated mobile support, other than personal convenience property, such as a person's luggage, toiletries, clothing, eye glasses, iPod, cell phone etc. The individual MSU member is personally

responsible for his or her personal property at all times. If it is lost, stolen or damaged, the individual is not authorized to make a claim for reimbursement.

- 8. This Agreement is effective on the date it has been fully executed by all parties.
- 9. IDHS intends to use the Emergency Management Contingency Fund to defray the expenses incurred hereunder.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

For the Indiana Department of Homeland Security:

By: _____ Date: _____

Printed Name

Title

For _____ (Political Subdivision):

By: _____

Date: _____

Printed Name

Title

Enclosure 6: Statutory Provisions Governing Mobile Support Units:

Tort Liability & Immunity of Emergency Management Workers: Under IC 10-14-3-15 (a), any function under this chapter (Emergency Management and Disaster Law) and any other activity relating to emergency management is a governmental function. The state, any political subdivision, any other agencies of the state or political subdivision of the state, or, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker complying with or reasonably attempting to comply with this chapter or any order or rule adopted under this chapter, or under any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, is not liable for the death of or injury to persons or for damage to property as a result of any such activity.

“Political Subdivision” defined. In Indiana, the term “political subdivision” means city, town, township, county, school corporation, library district, local housing authority, public transportation corporation, local building authority, local hospital or corporation, local airport authority or other separate local governmental entity that may sue and be sued. (See IC 10-14-3-6, IC 36-1-2-13, IC 36-1-2-10, IC 36-1-2-11, IC 36-1-2-18).

Emergency Management Workers: Under, IC 10-14-3-18(a), if the employees of a political subdivision render aid outside the political subdivision under section 17 of this chapter, the employees have the same powers, duties, rights, privileges and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

1. Licenses of Emergency Management Workers: Under IC 10-14-3-15 (b), any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized emergency management worker who, in the course of performing duties as an emergency management worker, practices a professional, mechanical, or other skill during a disaster emergency.

2. Worker’s Compensation: Under IC 10-14-3-15 (c), a volunteer working as an authorized emergency management worker may be covered by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7). If compensability of the injury is an issue, the administrative procedures of IC 22-3-2 through IC 22-3-7 shall be used to determine the issue.

3. Deployments outside Indiana:

a. Under IC 10-14-3-18 (c) The rights, privileges and obligations of this section also apply if aid is rendered outside Indiana and if payment or reimbursement in this case shall or may be made by the state or political subdivision receiving the aid under a reciprocal mutual aid agreement or compact with the other state or by the federal government.

b.. Under IC 10-14-3-19 (c), while on duty for training, an exercise, or a response, an individual serving as a member of a mobile support unit, whether within or outside Indiana, if the individual is an employee of the state or a political subdivision of the state, whether serving within or outside the political subdivision, has the same powers, duties, rights, privileges and immunities and shall receive the compensation and benefits incidental to the individual's employment.

c. Under IC 10-14-3-19(d), if a mobile support unit is deployed outside Indiana under the emergency management assistance compact, an individual serving as a member of the mobile support unit who is not an employee of the state is considered an employee of the state for purposes of the compact.

4. Employees of the State: Under IC 10-14-3-19 (h), an officer or employee of the state by virtue of employment is subject to assignment to a mobile support unit. Refusal to accept and perform the duties of an assignment constitutes grounds for dismissal from state employment.

Reimbursement of Political Subdivisions:

1. Under IC 10-14-3-19 (f), the state may reimburse a political subdivision for the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of an employee of the political subdivision while the employee is serving as a member of a mobile support unit, all payments for death, disability, or injury of an employee incurred in the course of duty while the employee was serving as a member of a mobile support unit and all losses of or damage to supplies and equipment of the political subdivision or the employee incurred while the employee was serving as a member of a mobile support unit.

Emergency Management Workers Not Employed By State or Political Subdivision:

1. Under IC 10-14-3-19 (c) (2), if the individual is not an employee of the state or a political subdivision of the state, is entitled to the same rights and immunities that are

provided for an employee of the state. An individual described in this subsection is considered an emergency management worker for purposes of section 15 (Tort immunity except for gross negligence or bad faith) of this chapter.

2. Under IC 10-14-3-19 (g), for an individual of a mobile support unit who is not an employee of the state or a political subdivision, the state may compensate the individual at a rate of pay approved by the executive director by reimbursing the individual for the actual and necessary travel, subsistence and maintenance expenses of the individual of the mobile support unit incurred while the individual is on duty as a member of a mobile support unit and for all losses of or damage to supplies and equipment of the individual incurred while the individual is on duty as a member of a mobile support unit.

Alternatively, the state may reimburse the individual's employer for the compensation paid and the actual and necessary travel, subsistence and maintenance expenses of the employee while the employee is on duty as a member of a mobile support unit while the employee was on duty as a member of a mobile support unit. If the employer's equipment is lost or damaged, the state may reimburse the employer for the loss of or damage to supplies and equipment of the employer or the employee incurred in the course of duty while the employee was on duty as a member of a mobile support unit.

Criminal Prosecutions. Under IC 14-3-34, a person who knowingly, intentionally or recklessly violates IC 10-14-3 commits a Class B Misdemeanor. Such instances should be reported to appropriate law enforcement personnel. County prosecutors decide whether or not to pursue a criminal action.

Death Benefits for MSU members.

- IC 36-8-7 is known as the 1937 Firefighter's Pension Fund. Section 12.4 establishes a monthly death benefit to the survivors of an eligible firefighter killed in the line of duty. This benefit may apply to MSU members who are covered firefighters.
- IC 36-8-6 is known as the 1925 Police Pension Fund. Section 10.1 establishes a monthly death benefit to the survivors of an eligible police officer killed in the line of duty. This benefit may apply to MSU members who are covered police officers.
- 42 USC Section 3796 establishes a death benefit of \$250,000 payable to the survivors of a "public safety officer" who dies as a direct and proximate result of a personal injury sustained in the line of duty. 28 CFR 32.2 (j) defines the term "public safety officer" to mean any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter,

rescue squad member or ambulance crew member.” This benefit may apply to MSU members who are covered public safety officers, as defined by 28 CFR.

- **Workers Compensation Death Benefit.** IC 22-3-3-17 provides that when death results from an injury within five hundred (500) weeks, there shall be paid the total dependents of the deceased weekly compensation amounting to sixty-six and two-thirds percent (66 2/3%) of the deceased's average weekly wage, as defined by IC 22-3-3-22, until the compensation paid, when added to the compensation paid to the deceased employee, equals five hundred (500) weeks. Payments to partial dependents of the deceased are as provided in IC 22-3-3-18 to IC 22-3-3-22.
- **Worker’s Compensation Burial Benefit.** IC 22-3-3-21 provides that In cases of the death of an employee from an injury by an accident arising out of and in the course of the employee's employment under circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding seven thousand five hundred dollars (\$7,500).
- **Public Employee Retirement Fund Benefits.** IC 5-10-11-4 provides for a death benefit program for the payment of lump sum death benefits to the survivors of a **state employee** who dies in the line of duty. The PERF board shall pay a death benefit of \$50,000 in a lump sum to the surviving spouse or surviving children of any state employee who dies in the line of duty. The death benefit provided by this chapter is in addition to any other benefits provided by state or federal law. This benefit may apply to MSU members who are state employees. This benefit is not paid to a “public safety officer who receives benefits under IC 5-10-10.
- IC 5-10-10-6 provides a “Special Death Benefit” of \$150,000 lump sum payment for a “**public safety officer**” **who dies in the line of duty**. A Public Safety Officer is defined as any of the following:
 - (1) A state police officer.
 - (2) A county sheriff.
 - (3) A county police officer.
 - (4) A correctional officer.
 - (5) An excise police officer.
 - (6) A county police reserve officer.
 - (7) A city police reserve officer.
 - (8) A conservation enforcement officer.
 - (9) A town marshal.
 - (10) A deputy town marshal.

- (11) A probation officer.
- (12) A state university, college, or junior college police officer appointed under IC 20-12-3.5.
- (13) A police officer whose employer purchases coverage under section 4.5 of this chapter.
- (14) An emergency medical services provider (as defined in IC 16-41-10-1) who is:
 - (A) employed by a political subdivision (as defined in IC 36-1-2-13); and
 - (B) not eligible for a special death benefit under IC 36-8-6-20, IC 36-8-7-26, IC 36-8-7.5-22, or IC 36-8-8-20.
- (15) A firefighter who is employed by the fire department of a state university.
- (16) A firefighter whose employer purchases coverage under section 4.5 of this chapter.
- (17) A member of a consolidated law enforcement department established under IC 36-3-1-5.1.
- (18) A gaming agent of the Indiana gaming commission.
- (19) A person who is:
 - (A) employed by a political subdivision (as defined in IC 36-1-2-13); and
 - (B) appointed as a special deputy under IC 36-8-10-10.6.
- (20) A gaming control officer of the Indiana gaming commission

This benefit may apply to MSU members who are covered public safety officers, as defined by IC 5-10-10-6.

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