

# TITLE 105

## INDIANA DEPARTMENT OF TRANSPORTATION

- Art. 1. PROCEDURAL REQUIREMENTS
- Art. 2. AIRCRAFT OPERATION
- Art. 3. AIRPORTS
- Art. 4. LIGHTER-THAN-AIR AIRCRAFT
- Art. 5. RAILROADS
- Art. 6. GENERAL PROVISIONS FOR HIGHWAYS
- Art. 7. PERMITS FOR HIGHWAYS
- Art. 8. PREQUALIFICATION OF CONTRACTORS AND BIDDING FOR HIGHWAYS (*REPEALED*)
- Art. 9. TRAFFIC CONTROL DEVICES FOR HIGHWAYS
- Art. 10. OVERSIZE AND/OR OVERWEIGHT VEHICULAR PERMITS FOR HIGHWAYS
- Art. 11. PREQUALIFICATION OF CONTRACTORS AND BIDDING
- Art. 12. PROCUREMENT OF SUPPLIES AND SERVICES

### ARTICLE 1. PROCEDURAL REQUIREMENTS

- Rule 1. Administrative Adjudication Procedures Related to Aeronautics Programs

#### **Rule 1. Administrative Adjudication Procedures Related to Aeronautics Programs**

- 105 IAC 1-1-1 One form of action; initiating a proceeding
- 105 IAC 1-1-2 Pleadings; informal proceedings; content of pleadings; agency action upon filing of deficient pleadings; record of proceeding
- 105 IAC 1-1-3 Form and filing of documents
- 105 IAC 1-1-4 Appearances by third persons and formal interventions
- 105 IAC 1-1-5 Request for oral argument; request for briefs; continuance
- 105 IAC 1-1-6 Exhibits
- 105 IAC 1-1-7 Petition for rehearing, reargument, or reconsideration
- 105 IAC 1-1-8 Hearing officer; selection
- 105 IAC 1-1-9 Findings and orders to be based on the hearing record

#### **105 IAC 1-1-1 One form of action; initiating a proceeding**

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13  
**Affected:** IC 4-21.5; IC 8-21-1-8

Sec. 1. Proceedings. (1) There shall be one form of formal proceeding (to be known as a "proceeding") under Section 8 [IC 8-21-1-8] of this Act.

(2) A proceeding may be instituted:

(a) By order to show cause or other process of the Commission.

(b) By the filing with the Commission of a formal application, complaint or petition.

*(Indiana Department of Transportation; Reg 1, Sec 1; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 593; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

*NOTE: Transferred from Department of Transportation (100 IAC 1-1-1) to Indiana Department of Transporta-*

*tion (105 IAC 1-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 1-1-2 Pleadings; informal proceedings; content of pleadings; agency action upon filing of deficient pleadings; record of proceeding**

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13  
**Affected:** IC 4-21.5; IC 8-21-1-8

Sec. 2. General Requirements as to Papers in Proceedings. (1) Informal Complaints. Complaints may be made to the Commission informally by letter or other writing and matters so presented may, if their nature warrants, be taken up by correspondence or conference with the person or persons complained of. Any matter not disposed of informally may be made the subject of a formal proceeding.

(2) Conformity to Rules. Any person wishing to institute a proceeding should consult the rules, regulations, and orders of the Commission under the various sections of the Act.

(3) Requirements in Absence of Rules. In case there is no rule, regulation, or order of the Commission which prescribes the contents of the formal application, complaint, or petition in a given case, the application, complaint, or petition should contain a concise but complete statement of the facts relied upon as the bases for the relief or action sought. The names and addresses of the persons, if any, against whom relief or action is sought, should also be set forth in full.

(4) Insufficient Allegations. In any case where the Commission is of the opinion that a formal application, complaint or petition does not sufficiently set forth the material required to be set forth by any applicable rule, regulation, or order of the Commission, or is otherwise insufficient, the Commission may advise the party filing the same of the deficiency and require that any additional information be supplied by amendment.

(5) Answers. Answers to formal complaints, petitions and orders to show cause will not usually be required. In case the Commission deems an answer to be desirable, the parties will be notified.

(6) Retention of Papers by the Commission. When any formal application, complaint, or petition is denied, dismissed or permitted to be withdrawn, in whole or in part, said application, complaint or petition, and all documents filed with the Commission pertaining thereto shall be retained in the files of the Commission. When any proceeding instituted by the Commission is dismissed, terminated or rescinded, all documents filed with

the Commission pertaining thereto shall be retained in the files of the Commission; Provided, that this paragraph shall not apply to documents filed with the Commission in any proceeding on the basis of a stipulation that such documents will be returned to the parties so filing when the purpose for which the documents are filed has been served. (*Indiana Department of Transportation; Reg 1, Sec II; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 593; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-2) to Indiana Department of Transportation (105 IAC 1-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 1-1-3 Form and filing of documents

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 3. Form and Filing of Documents. (1) Execution, Number of Copies and Service. Unless otherwise required by applicable rule or regulation, every application, petition and formal complaint relating to any of the provisions of Section 8 [IC 8-21-1-8] of the Act, and every answer or other formal document in any such proceeding, shall be signed by, or on behalf of, the person filing the same, and shall be verified by the person signing the same, in the manner required by paragraph 2 of this section. Briefs and exceptions to reports shall be signed but need not be verified. Any general partner may sign on behalf of a partnership. Documents filed by a corporation, business trust or other similar organization must be signed by an officer who is duly authorized to take such action. An executed original copy of each such document, and seven true copies thereof, which need not be signed or verified, but which should have typed or facsimile signatures, shall be filed with the Commission. Each person filing any such document shall furnish such additional copies and shall make such service of the document on other persons as the Commission may at any time require. Such documents shall be delivered in person, through the mails, or otherwise, to the Aeronautics Commission of Indiana, in Indianapolis, Indiana, and shall be deemed to have been filed on the date on which they are actually received by the Commission.

(2) Verification. Every verification shall set forth that the person verifying the document has read and is familiar with the contents thereof and the attached exhibits, if any; that he intends and desires that in taking the action or granting or denying the relief requested, the Commission shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth;

that to the best of his information and belief, every statement contained in the instrument is true and no such statement is misleading.

(3) Formal Specifications of Papers. All papers filed in proceedings should be on strong, durable paper not larger than 8½" by 11" in size except that tables, charts, and other documents may be larger folded to approximately that size. The left margin should be at least 1½" wide and, if the document is bound, it should be bound on the left side.

(4) Reproduction of Papers. Papers may be reproduced by printing or by any other process, provided the copies are clear and legible. Appropriate notes or other indications should be used, so that the existence of deficits and any other matters normally shown in color will be accurately indicated on photostatic copies.

(5) Waiver of Strict Compliance with Rule. The Commission may, in its discretion, waive strict compliance with any requirement of this section. (*Indiana Department of Transportation; Reg 1, Sec III; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 594; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-3) to Indiana Department of Transportation (105 IAC 1-1-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 1-1-4 Appearances by third persons and formal interventions

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13

Affected: IC 4-21.5; IC 8-21-1-8

Sec. 4. Appearances by Third Persons and Formal Interventions. (1) Petition for appearance of Third Persons. Any person, other than the original parties to the proceeding, who shall desire to appear and participate in any proceeding before the Commission, may petition for leave to intervene in the proceeding prior to or at the time it is called for hearing, but not thereafter, except for good cause shown. The petition must be in writing and state clearly the name and address of the party intervening, name and address of his attorney, if any, and his position in regard to the matter in controversy. If the petition discloses a substantial interest in the subject matter of the hearing, the Commission may grant the same. Thereafter such petitioner shall become a party to the proceedings and shall be known as an "intervener", with the same right to produce witnesses and of cross-examination as other parties to the proceeding.

(2) Denial of Petition for Intervention. Whenever it appears that any person petitioning for intervention has no substantial interest in the proceeding, the Commission may deny the petition or dismiss him from the proceed-

ing. (*Indiana Department of Transportation; Reg 1, Sec IV; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 596; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-4) to Indiana Department of Transportation (105 IAC 1-1-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 1-1-5 Request for oral argument; request for briefs; continuance**

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13  
**Affected:** IC 4-21.5; IC 8-21-1-8

Sec. 5. Oral Argument and Briefs. (1) Oral Argument. Upon request of any party, the Commission may permit oral argument at the close of the hearing.

(2) Briefs. If a case presents unusually difficult questions of fact or law, the Commission may permit or require the submission of proposed findings of fact or conclusions, or of written briefs, to aid in the preparation of its report.

(3) Submission of Briefs. After a date has been set for the submission of proposed findings of fact or conclusions, or written briefs to the Commission, or the filing of exceptions to Commission's report or briefs thereon, such date may be postponed upon proper cause shown, but any such postponement shall not be granted by the Commission less than three days prior to the date originally set for the filing thereof except in cases involving unusual circumstances imposing substantial hardship upon the requesting party or parties. (*Indiana Department of Transportation; Reg 1, Sec V; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 596; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-5) to Indiana Department of Transportation (105 IAC 1-1-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 1-1-6 Exhibits**

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13  
**Affected:** IC 4-21.5; IC 8-21-1-8

Sec. 6. Exhibits. (1) Submission of Exhibits. Wherever practicable, seven copies of each exhibit (in addition to the original offered in evidence at the hearing) should be furnished for the use of the Commission. One copy should also be furnished to each party at the hearing, and the Commission may, in its discretion, direct that any other person deemed by it to have a sufficient interest shall receive copies of designated exhibits.

(a) Excerpts from lengthy documents or of portions of the record in other proceedings before the Commission should be offered in the form of exhibits and copies

furnished as above provided. Such exhibits may be received in evidence, subject to objection and rebuttal by other counsel, after opportunity to examine the exhibit in question and the source from which the same was taken.

(*Indiana Department of Transportation; Reg 1, Sec VI; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 597; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-6) to Indiana Department of Transportation (105 IAC 1-1-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 1-1-7 Petition for rehearing, reargument, or reconsideration**

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13  
**Affected:** IC 4-21.5; IC 8-21-1-8

Sec. 7. Petition for Rehearing, Reargument, or Reconsideration. (1) Petition for Rehearing. Any party may petition for rehearing, reargument, or reconsideration of any final order by the Commission in a proceeding, or for further hearing before decision by the Commission.

(2) Form of Petition. The matters of record claimed to have been erroneously decided must be specified, and the alleged errors and the grounds relied upon must be briefly and specifically stated in the petition.

(a) If a final order of the Commission is sought to be vacated or modified by reason of matters which have arisen since the hearing, or of a consequence which would result from a compliance therewith, or both, the new matter, the resulting consequence, or both, which are relied upon by the petitioner must each be set forth in the petition. Where the petition is based wholly or in part upon new matter, the petition must contain a statement that the petitioner, with due diligence, could not have known or discovered the new matter prior to the time of the hearing.

(b) The petition must set forth a brief statement of the relief sought by the petitioner.

(c) Such petition for rehearing, reargument, or reconsideration, must be filed within thirty days after service of the order sought to be vacated or modified. After the expiration of said thirty days, such a petition may be filed only by leave of the Commission granted pursuant to formal application upon a showing of reasonable grounds for failure to file the petition within the prescribed thirty-day period. Any such petition or application shall be served by the petitioner or applicant upon all parties to the proceeding or their attorneys of record.

(3) Effective Date of Final Order. No petition for rehearing, reargument, or reconsideration filed in accor-

dance with this section, or the granting thereof, shall operate as a stay of the effective date of the final order sought to be modified or vacated by such petition, unless specifically so ordered by the Commission.

(4) Rehearing by Order of the Commission. Within 30 days after service of any final order the Commission may, upon its own motion, order a rehearing or reargument for the purpose of taking additional evidence or clarification of the question of law involved in any proceeding. (*Indiana Department of Transportation; Reg 1, Sec VII; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 597; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-7) to Indiana Department of Transportation (105 IAC 1-1-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 1-1-8 Hearing officer; selection**

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 4-21.5; IC 8-21-1-8

Sec. 8. Hearings. (1) Hearings may be conducted by the Commission, by any member of the Commission, by the Director of the Commission, or by any Examiner authorized by the Commission. (*Indiana Department of Transportation; Reg 1, Sec VIII; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 598; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-8) to Indiana Department of Transportation (105 IAC 1-1-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 1-1-9 Findings and orders to be based on the hearing record**

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 4-21.5; IC 8-21-1-8

Sec. 9. Findings, Conclusions and Decisions. (1) All findings, conclusions and decisions, and orders issued therewith, shall be based only upon evidence and facts properly introduced and included in the official record of formal proceedings and the Commission will not consider any matters not so presented. Any new matter, not a part of the record, shall be presented to the Commission as provided in Section 7 [of this rule]. (*Indiana Department of Transportation; Reg 1, Sec IX; filed Sep 18, 1945, 1:00 p.m.: Rules and Regs. 1947, p. 598; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 1-1-9) to Indiana Department of Transportation (105 IAC 1-1-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.

## **ARTICLE 2. AIRCRAFT OPERATION**

### **Rule 1. Registration of Aerial Applicators**

#### **Rule 1. Registration of Aerial Applicators**

105 IAC 2-1-1	Definitions
105 IAC 2-1-2	Registration required
105 IAC 2-1-3	Place and time of registration
105 IAC 2-1-4	Prerequisite of registration
105 IAC 2-1-5	Certificate; filing; presentation on request
105 IAC 2-1-6	Notice of cessation of activities; return of certificate
105 IAC 2-1-7	Submission of reports
105 IAC 2-1-8	Penalty

#### **105 IAC 2-1-1 Definitions**

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 8-21-1-10.2; IC 15-3-3.6-6; IC 15-3-3.6-7

Sec. 1. Definitions. For the purpose of this regulation, the following words, terms and phrases shall have the meaning herein given.

“Aerial Applicator” means any person who uses an aircraft in the application of any chemicals such as germicides, insecticides, fungicides, or herbicides, or other chemicals or materials such as fertilizers or seeds upon the lands or waters of this State.

“Aircraft” means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

“Person” means any individual, firm, partnership, corporation, company, association, joint stock association or body politic; and includes any trustees, receiver, assignee, or other similar representative thereof. (*Indiana Department of Transportation; Reg 2, Sec 1; filed Mar 20, 1951, 11:30 a.m.: Rules and Regs. 1952, p. 4; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 2-1-1) to Indiana Department of Transportation (105 IAC 2-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 2-1-2 Registration required**

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 8-21-1-10.2; IC 15-3-3.6-6; IC 15-3-3.6-7

Sec. 2. Registration Required. Any person who is engaged or intends to become engaged as an “Aerial Applicator” in this State, shall register with the Aeronautics Commission of Indiana. (*Indiana Department of Transportation; Reg 2, Sec 2; filed Mar 20, 1951, 11:30 a.m.: Rules and Regs. 1952, p. 4; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 2-1-2) to Indiana Department of Transportation (105 IAC 2-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 2-1-3 Place and time of registration****Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13**Affected:** IC 8-21-1-10.2; IC 15-3-3.6-6; IC 15-3-3.6-7

Sec. 3. Place and Time of Registration. An "Aerial Applicator" shall register upon such forms as may from time to time be prescribed by the Aeronautics Commission of Indiana. Any person desiring to make registration as an "Aerial Applicator" shall file such executed registration form in the office of the Director of Aeronautics of the State of Indiana, prior to the beginning of aerial application operations by any such person. Any person engaged in "Aerial Applicator" operations in this state prior to the effective date of this regulation shall register as an "Aerial Applicator" within 30 days from the date of adoption of such regulation. (*Indiana Department of Transportation; Reg 2, Sec 3; filed Mar 20, 1951, 11:30 a.m.: Rules and Regs. 1952, p. 4; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 2-1-3) to Indiana Department of Transportation (105 IAC 2-1-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 2-1-4 Prerequisite of registration****Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13**Affected:** IC 8-21-1-10.2; IC 15-3-3.6-6; IC 15-3-3.6-7

Sec. 4. Prerequisite of Registration. Any person registering with the Aeronautics Commission of Indiana as an "Aerial Applicator" shall tender along with such executed registration form, as a prerequisite to registration, evidence satisfactory to the Director of Aeronautics that the registrant is the holder of an appropriate waiver or letter of authority from the Civil Aeronautics Administration relative to such aerial application. (*Indiana Department of Transportation; Reg 2, Sec 4; filed Mar 20, 1951, 11:30 a.m.: Rules and Regs. 1952, p. 5; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 2-1-4) to Indiana Department of Transportation (105 IAC 2-1-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 2-1-5 Certificate; filing; presentation on request****Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13**Affected:** IC 8-21-1-10.2; IC 15-3-3.6-6; IC 15-3-3.6-7

Sec. 5. Display of Certificate. The Certificate of Registration issued pursuant to this Regulation shall be on file at the home office of the "aerial applicator". A copy of the Certificate of Registration shall be carried at all times in each aircraft of the "aerial applicator" while engaged in aerial application operation in the State of

Indiana. The Certificate of Registration, or a copy thereof, shall be presented upon the request of any duly authorized representative of the Indiana Aeronautics Commission, any state or local official charged with enforcing state or local laws or regulations, or any other person directly interested in such aerial application operations. (*Indiana Department of Transportation; Reg 2, Sec 5; filed Mar 20, 1951, 11:30 a.m.: Rules and Regs. 1952, p. 5; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 2-1-5) to Indiana Department of Transportation (105 IAC 2-1-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 2-1-6 Notice of cessation of activities; return of certificate****Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13**Affected:** IC 8-21-1-10.2; IC 15-3-3.6-6; IC 15-3-3.6-7

Sec. 6. Notification of Ceasing of Activities. When any person registered as an "aerial applicator" ceases to be engaged as an "aerial applicator", in the State of Indiana, such person shall notify the Aeronautics Commission of the cessation of such activity, forwarding along with such notice, the certificate of registration and all copies thereof to the Aeronautics Commission of Indiana. (*Indiana Department of Transportation; Reg 2, Sec 6; filed Mar 20, 1951, 11:30 a.m.: Rules and Regs. 1952, p. 5; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 2-1-6) to Indiana Department of Transportation (105 IAC 2-1-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 2-1-7 Submission of reports****Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13**Affected:** IC 8-21-1-10.2; IC 15-3-3.6-6; IC 15-3-3.6-7

Sec. 7. Submission of Reports. Any person registered as an "aerial applicator" in this State shall submit to the Aeronautics Commission of Indiana such factual information pertinent to such operation as the Commission may from time to time prescribe. (*Indiana Department of Transportation; Reg 2, Sec 7; filed Mar 20, 1951, 11:30 a.m.: Rules and Regs. 1952, p. 5; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 2-1-7) to Indiana Department of Transportation (105 IAC 2-1-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 2-1-8 Penalty****Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13**Affected:** IC 8-21-1-10.2; IC 8-21-1-12; IC 15-3-3.6-6; IC 15-3-3.6-7

Sec. 8. Penalty. Any person found to be in violation of any part of this regulation shall be subject to the provisions of Section 12 [IC 8-21-1-12], Chapter 360, Acts of 1945. (*Indiana Department of Transportation; Reg 2, Sec 8; filed Mar 20, 1951, 11:30 a.m.: Rules and Regs. 1952, p. 6; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 2-1-8) to Indiana Department of Transportation (105 IAC 2-1-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### ARTICLE 3. AIRPORTS

- Rule 1. Airport Development Funds
- Rule 2. Preapplication and Project Applications for Airport Aid Program
- Rule 3. Airport Site Approvals and Operating Certificates of Approval
- Rule 4. Ultralight Flightparks

#### Rule 1. Airport Development Funds

- 105 IAC 3-1-1 Fund requests
- 105 IAC 3-1-2 Eligibility of project
- 105 IAC 3-1-3 Conditions for use of funds
- 105 IAC 3-1-4 Priorities
- 105 IAC 3-1-5 Contractual agreement
- 105 IAC 3-1-6 Payments

#### 105 IAC 3-1-1 Fund requests

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13  
Affected: IC 8-21-1-9

Sec. 1. Fund Requests. Applications for airport development funds will be made on forms and in a manner as prescribed by the Indiana department of transportation. The department shall review requests for funds for airport development and after determining that the project is necessary and is an orderly construction or expansion of an airport, shall issue a tentative allocation for the amount of the funds the department deems appropriate, taking into consideration the project priority and the availability of state funds. (*Indiana Department of Transportation; Reg 6, Fund Requests; filed Aug 20, 1973, 11:10 a.m.: Rules and Regs. 1974, p. 30; filed Jun 8, 1988, 10:15 a.m.: 11 IR 3142; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-2-1) to Indiana Department of Transportation (105 IAC 3-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 3-1-2 Eligibility of project

Authority: IC 8-9.5-5-8; IC 8-9.5-5-13  
Affected: IC 8-21-1-8; IC 8-21-1-9

Sec. 2. Eligibility of Project. The allocation program is designed to optimize the use of the Airport Development

Fund. The primary goal of the allocation program is to:

- (1) further the proper development and maintenance of a state-wide system of airports,
- (2) to further economic development, and
- (3) to provide safety of aircraft operations.

This program requires the project to:

- (1) Be for the establishment or improvement of a public-use airport.
- (2) Be included in the Indiana Airport System Plan, as provided in IC 8-21-1-8.
- (3) Be located on a site approved by the Indiana department of transportation.
- (4) Follow an airport layout plan approved by the Indiana department of transportation.
- (5) Meet the general design criteria of the Federal Aviation Administration Advisory Circulars.

These are examples and guidelines and may be waived by the Indiana department of transportation, where, in the judgment of the department, the public interest is best served by allowing less stringent criteria.

The amount of funds requested may not exceed the amount of funds provided by the project applicant. Previously expended funds may not be used as matching funds with the exception of land acquired and engineering agreements entered into after June 30, 1973.

Engineering agreements for work to be financed in part by the Airport Development Fund shall be reviewed for approval by the Indiana department of transportation.

Airport development items which are typically eligible for funding are:

- (1) Land acquisition for development of airport facilities.
- (2) Engineering and legal fees for airport planning and development.
- (3) Grading, drainage, paving, and miscellaneous items necessary for the construction or reconstruction of runways, taxiways and aprons.
- (4) Acquisition of runway clear zones and aviation easements, or other interests in airspace as may be reasonably required for safeguarding aircraft operations in the vicinity of an airport.
- (5) Removal of obstructions from approach areas.
- (6) Installation or relocation of segmented circles; runway, apron and taxiway lights; taxiway guidance signs; obstruction lights; security flood lights; airport beacons; wind and landing direction indicators; auxiliary power units; REIL's (Runway End Identification Lights) and visual glideslope indicator systems.
- (7) Grading, drainage, paving and miscellaneous items necessary for the construction or reconstruction of airport access roads and public auto parking areas.
- (8) Construction of airport safety facilities, security fencing, acquisition of aircraft rescue and firefighting (ARFF) vehicles, and snow removal equipment.

(9) Installation of instrument landing systems, approach lighting systems and other approach aids.

(10) Development of master planning grants.

(11) Airport operational buildings, however, additional building projects will not be eligible until the eighth fiscal year after the completion of the previous building project.

(12) Other items may be approved, where, in the judgment of the department, the public interest is best served.

*(Indiana Department of Transportation; Reg 6, Eligibility of Project; filed Aug 20, 1973, 11:10 a.m.: Rules and Regs. 1974, p. 30; filed Jun 8, 1988, 10:15 a.m.: 11 IR 3142; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-2-2) to Indiana Department of Transportation (105 IAC 3-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-1-3 Conditions for use of funds

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 8-21-1-9

Sec. 3. Conditions. An applicant receiving airport development funds will be expected to work diligently towards obtaining airport hazard zoning and compatible land use zoning. Future projects may be delayed if the airport protection is not obtained.

Any applicant receiving airport development funds shall operate the airport facility for a minimum of twenty years. Failure to meet this requirement shall result in a refund to the Airport Development Fund by the applicant. *(Indiana Department of Transportation; Reg 6, Conditions; filed Aug 20, 1973, 11:10 a.m.: Rules and Regs. 1974, p. 31; filed Jun 8, 1988, 10:15 a.m.: 11 IR 3143; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-2-3) to Indiana Department of Transportation (105 IAC 3-1-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-1-4 Priorities

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 8-21-1-9

Sec. 4. Priorities. The allocation program for the Indiana Airport Development Fund is intended to provide economic development throughout the state and to complete the Indiana Airport System Plan. The principles of the program will be to preserve existing landing facilities, to assist projects involving safety of aircraft operations, and to develop new and additional landing facilities in areas of greatest need. *(Indiana Department of Transportation; Reg 6, Priorities; filed Aug 20, 1973, 11:10 a.m.: Rules and Regs. 1974, p. 32; filed Jun 8,*

*1988, 10:15 a.m.: 11 IR 3143; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-2-4) to Indiana Department of Transportation (105 IAC 3-1-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-1-5 Contractual agreement

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 8-21-1-9

Sec. 5. Agreement. A contractual agreement will be prepared by the Indiana department of transportation to establish certain basic general agreements and to provide a detailed breakdown on project costs. *(Indiana Department of Transportation; Reg 6, Agreement; filed Aug 20, 1973, 11:10 a.m.: Rules and Regs. 1974, p. 32; filed Jun 8, 1988, 10:15 a.m.: 11 IR 3143; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-2-5) to Indiana Department of Transportation (105 IAC 3-1-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-1-6 Payments

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 8-21-1-9

Sec. 6. Payments. Forms will be provided by the Indiana department of transportation for payment request. Partial payments may be made, but in no case will payments exceed the project applicant's participation. *(Indiana Department of Transportation; Reg 6, Payments; filed Aug 20, 1973, 11:10 a.m.: Rules and Regs. 1974, p. 32; filed Jun 8, 1988, 10:15 a.m.: 11 IR 3143; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-2-6) to Indiana Department of Transportation (105 IAC 3-1-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

## Rule 2. Preapplication and Project Applications for Airport Aid Program

105 IAC 3-2-1 Definitions

105 IAC 3-2-2 Submission of preapplication and project application

### 105 IAC 3-2-1 Definitions

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 8-21-1-8

Sec. 1. Definitions. (A) "Municipality"—any political subdivision, district, public corporation or authority in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve or operate airports or other air navigation facilities.

(B) “Public Agency” and “Sponsor”—have the same meaning as set forth in the Federal Airport and Airway Development Act of 1970 Pub. L. 91-258, as amended. (*Indiana Department of Transportation; Reg 7, Sec 1; filed Sep 11, 1978, 4:25 p.m.: 1 IR 637; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-3-1) to Indiana Department of Transportation (105 IAC 3-2-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 3-2-2 Submission of preapplication and project application

**Authority:** IC 8-9.5-5-8; IC 8-9.5-5-13

**Affected:** IC 8-21-1-8

Sec. 2. Preapplications and Applications. (A) Any sponsor that desires to implement the Airport Aid Program for airport development or planning grant projects under the Airport and Airway Development Act is required to submit thru the Aeronautics Commission of Indiana the Preapplication and Project Application for its review. These documents shall be in accordance with the Federal Aviation Regulations Part 152.

(B) The Commission, after its review, will forward these documents to the appropriate Airport District Office of the Federal Aviation Administration with comments not later than five working days after the second Commission meeting on the receipt of the said documents. (*Indiana Department of Transportation; Reg 7, Sec 2; filed Sep 11, 1978, 4:25 p.m.: 1 IR 637; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-3-2) to Indiana Department of Transportation (105 IAC 3-2-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### Rule 3. Airport Site Approvals and Operating Certificates of Approval

105 IAC 3-3-1	Purpose
105 IAC 3-3-2	Definitions
105 IAC 3-3-3	Classification of airports
105 IAC 3-3-4	Requirements for public-use airports
105 IAC 3-3-5	General policy
105 IAC 3-3-6	Establishment of airport without site approval unlawful
105 IAC 3-3-7	Failure to apply for certificate of site approval
105 IAC 3-3-8	Application for certificate of site approval
105 IAC 3-3-9	Standards for issuing certificate of site approval
105 IAC 3-3-10	Alteration or expansion of an existing public-use airport
105 IAC 3-3-11	Annual operating certificates of approval
105 IAC 3-3-12	Requirements for annual operating certificates of approval—heliports and seaplane bases
105 IAC 3-3-13	Waivers

105 IAC 3-3-14	Non-compliance with regulations
105 IAC 3-3-15	Enforcement of department actions
105 IAC 3-3-16	Inspections
105 IAC 3-3-17	Requirements for private-use airports
105 IAC 3-3-18	General policy
105 IAC 3-3-19	Establishment of airport without site approval unlawful
105 IAC 3-3-20	Failure to apply for certificate of site approval
105 IAC 3-3-21	Application for certificate of site approval
105 IAC 3-3-22	Standards for issuing certificate of site approval
105 IAC 3-3-23	Waivers
105 IAC 3-3-24	Enforcement of department actions
105 IAC 3-3-25	Inspections
105 IAC 3-3-26	Change of status or abandonment
105 IAC 3-3-27	Requirements for temporary airports
105 IAC 3-3-28	Establishment of temporary airport without approval unlawful
105 IAC 3-3-29	Application for approval of temporary airport
105 IAC 3-3-30	Standards for issuing notices
105 IAC 3-3-31	Failure to apply for approval notice
105 IAC 3-3-32	Specific exemptions
105 IAC 3-3-33	Penalties
105 IAC 3-3-34	Severability

### 105 IAC 3-3-1 Purpose

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 1. The purpose of this regulation (100 IAC 3-4) [*this rule*] is to further the public interest and aeronautical progress, provide for the protection and promotion of safety in aeronautics, and contribute to the principle of effecting uniform regulations of aeronautics, in order that those engaged in aeronautics of every character may so engage with the least possible restriction consistent with the safety and rights of others. (*Indiana Department of Transportation; 105 IAC 3-3-1; filed Jan 6, 1983, 1:55 p.m.: 6 IR 309; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-1) to Indiana Department of Transportation (105 IAC 3-3-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 3-3-2 Definitions

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1-10.1

Sec. 2. (a) Aircraft—any contrivance now known, or hereinafter invented, used or designed for navigation of or flight in the air.

(b) Airport—any area, site or location, either on land, water or upon any building, which is specifically adapted and maintained for the landing and taking off of aircraft, and includes its buildings and facilities, if any.

(c) Certificate of Site Approval Holder—the current owner and/or operator of an airport.

(d) Department—the Indiana department of transportation, division of aeronautics.

(e) FAA—Federal Aviation Administration.

(f) Heliport—any area designated and designed for the exclusive use of rotary wing and vertical take off and landing (VTOL) aircraft.

(g) Lighter-Than-Air-Aircraft—a gas or hot air filled free balloon, with or without airborne heaters or engines, or any other type of balloon designed to transport persons or goods.

(h) Municipality—any county, city, or incorporated town, of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(i) Operating Certificate of Approval Holder—the owner and/or operator of a public-use airport.

(j) Overall Runway Length—the distance measured to include the usable runway length plus the area beyond the runway threshold specifically designed as runway for use by aircraft.

(k) Person—any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, including any trustee, receiver, assignee, or other similar representative thereof.

(l) Personal Use Airport—an airport that is used exclusively by the owner.

(m) Private Use Airport—an airport that is for the exclusive use of the owner or other persons specifically authorized by the owner.

(n) Provisional Landing Site—any area, site or location which is not classified as an airport, has no based aircraft, and is only used on an occasional basis with the landowner's permission by helicopters, lighter-than-air aircraft, or aircraft engaged in aerial applications to agricultural lands in accordance with IC 8-21-1-10.1.

(o) Public Use Airport—an airport, whether privately or publicly owned, which the owner or persons having a right of access and control invite, encourage or allow flight operations by the general public without prior authorization, and which usually has commercial operations.

(p) Runway—that portion of an airport, either turf or paved, which is designated for landing and taking off of aircraft.

(q) Runway Safety Area—an area symmetrically located about the runway centerline, the dimensions of which include the runway width, and which is maintained for emergency aircraft operation.

(r) Seaplane Base—an area of water specifically designated for the landing and taking off of seaplanes.

(s) Temporary Airport—an airport which is intended to

be used for a period of less than thirty (30) consecutive days for special events or emergency services.

(t) Threshold—a point at which a minimum 20:1 obstruction clearance is obtained and which is represented by a line perpendicular to the runway centerline indicating the beginning of the usable landing length of the specific runway.

(u) Ultralight—an aircraft that is used only for recreation or sport purposes, and satisfies all criteria and requirements of the Federal Aviation Regulations, Part 103.

(v) Ultralight Flightpark—an area, site, or location which is specifically adapted and used or intended to be used for the landing and taking off of ultralights.

(w) Usable Landing Length—the distance measured from any runway threshold to the opposite end of that runway. (*Indiana Department of Transportation; 105 IAC 3-3-2; filed Jan 6, 1983, 1:55 p.m.: 6 IR 309; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Transportation (100 IAC 3-4-2) to Indiana Department of Transportation (105 IAC 3-3-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-3-3 Classification of airports

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 3. All airports in Indiana shall be classified as one of the following:

- (1) Public-Use
- (2) Private-Use
- (3) Temporary

Any landing strip, which is specifically adapted and maintained for the landing and taking off of aircraft shall be classified as an airport, whether or not facilities are provided for the shelter, servicing or repair of aircraft.

Unless stated otherwise, the term “airport”, as used in this regulation (100 IAC 3-4) [*this rule*], shall include heliports, seaplane bases, and any area designated for the exclusive use of ultralights. (*Indiana Department of Transportation; 105 IAC 3-3-3; filed Jan 6, 1983, 1:55 p.m.: 6 IR 310; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Transportation (100 IAC 3-4-3) to Indiana Department of Transportation (105 IAC 3-3-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-3-4 Requirements for public-use airports

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 4. Sections 5 through 16 of this regulation (100

IAC 3-4) [this rule] shall apply to all public-use airports in the state, except as hereinafter exempted from the requirements. (*Indiana Department of Transportation; 105 IAC 3-3-4; filed Jan 6, 1983, 1:55 p.m.: 6 IR 310; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-4) to Indiana Department of Transportation (105 IAC 3-3-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 3-3-5 General policy

Authority: IC 8-9.5-5-8

Affected: IC 8-9.5; IC 8-21-1

Sec. 5. It shall be the policy of the department to certificate all applicable public-use airports meeting the following requirements excepting those requirements which have been waived by the department. (*Indiana Department of Transportation; 105 IAC 3-3-5; filed Jan 6, 1983, 1:55 p.m.: 6 IR 310; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-5) to Indiana Department of Transportation (105 IAC 3-3-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 3-3-6 Establishment of airport without site approval unlawful

Authority: IC 8-9.5-5-8

Affected: IC 8-9.5; IC 8-21-1

Sec. 6. (a) It shall be unlawful for any municipality or person to acquire, establish, construct, activate, or lease any public-use airport without first being issued a certificate of site approval by the department.

(b) A certificate of site approval issued by the department shall remain valid indefinitely, unless it is revoked by the department, pursuant to section 15 of this regulation (100 IAC 3-4) [this rule], or until such time as the airport is closed, whether voluntarily by the owner, or by order of the department or any court of general jurisdiction.

(c) Any person or municipality who desires to open or reactivate any public-use airport which has been closed and/or for which the certificate of site approval has been revoked by the department must apply for a new certificate of site approval pursuant to section 8 of this regulation (100 IAC 3-4) [this rule]. (*Indiana Department of Transportation; 105 IAC 3-3-6; filed Jan 6, 1983, 1:55 p.m.: 6 IR 311; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-6) to Indiana Department of Transportation (105 IAC 3-3-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 3-3-7 Failure to apply for certificate of site approval

Authority: IC 8-9.5-5-8

Affected: IC 8-9.5; IC 8-21-1

Sec. 7. Failure to apply for a certificate of site approval for a public-use airport from the department as required in section 6 [of this rule] shall result in appropriate actions by the department to close the airport. The department may invoke the aid of any court of general jurisdiction to carry out its orders by injunction or other legal process. (*Indiana Department of Transportation; 105 IAC 3-3-7; filed Jan 6 1983, 1:55 p.m.: 6 IR 311; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-7) to Indiana Department of Transportation (105 IAC 3-3-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 3-3-8 Application for certificate of site approval

Authority: IC 8-9.5-5-8

Affected: IC 8-9.5; IC 8-21-1

Sec. 8. (a) Application for a certificate of site approval for a public-use airport shall be made on forms prescribed and furnished by the department, and shall be accompanied by:

- (1) A section of a current federal or state sectional aeronautical chart or topographic map depicting an area of at least a 25 nautical mile radius surrounding the plotted position of the proposed public-use airport.
- (2) A detailed drawing on forms provided by the department, which shows the proposed site and the immediate adjacent area, prepared in such manner as will clearly indicate the initial and ultimate stages of airport development, airport property lines, obstructions, other general characteristics of the area including distance and direction to the nearest city or town, and depict the air traffic pattern for the proposed public-use airport.
- (3) Written consent of the property owner(s) unless the applicant holds title in fee simple to the proposed site.
- (4) A statement of the location of any sanitary landfills or open dumps within 2 miles of the proposed public-use airport boundaries.
- (5) Evidence that the applicant has obtained approval from the local zoning authority to establish a public-use airport at the proposed site.

(b) In addition to the information required above, FAA Form 7480-1, "Notice of Landing Area Proposal," as required by FAA, will be furnished by the department and may be filed along with the state application for site approval. (*Indiana Department of Transportation; 105 IAC 3-3-8; filed Jan 6, 1983, 1:55 p.m.: 6 IR 311; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

*NOTE: Transferred from Department of Transportation (100 IAC 3-4-8) to Indiana Department of Transportation (105 IAC 3-3-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 3-3-9 Standards for issuing certificate of site approval**

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 9. (a) In determining whether it shall issue a certificate of site approval for any proposed public-use airport, the department shall take into consideration its proposed location, size, and layout, the relationship of the proposed airport to the current national and state airport systems plans and any applicable airport master plans, whether there are safe areas available for expansion purposes, whether the adjoining area is free from obstructions based on a proper approach ratio, the nature of the terrain, the nature of the uses to which the proposed airport will be put, the possibilities for future development, and such other factors as, under the circumstances, it regards as having an important bearing thereon, including the minimum safety standards hereinafter prescribed, in section 11(C) *[of this rule]*.

(b) Certificates of site approval may be granted with such restrictions and limitations as the department deems reasonable and necessary for safe airport operations.

(c) A certificate of site approval shall not be issued by the department in the following circumstances:

- (1) When the Federal Aviation Administration has issued an objectionable airspace determination,
- (2) When the local governing body has not given land use approval to establish a public-use airport at such site, if that body has adopted a zoning ordinance, or
- (3) When the proposed airport site is:

(A) Within 10,000 feet of any open dump, waste disposal site or sanitary landfill where the proposed airport would be used by turbojet aircraft, unless the landfill is used exclusively for the disposal of rock and earth.

(B) Within 5,000 feet of any open dump, waste disposal site, or sanitary landfill, where the proposed airport would be used only by piston type aircraft, unless the landfill is used exclusively for the disposal of rock and earth.

(d) In addition to the foregoing requirements, a certificate of site approval for a public-use seaplane base shall not be issued by the department unless any governmental body or authority having jurisdiction over the body of water has given approval for use of the site as a public-use seaplane base.

(e) In addition to the foregoing requirements, a certifi-

cate of site approval for a public-use heliport shall not be issued by the department unless the heliport will satisfy all conditions imposed by the FAA in their airspace analysis determination. The heliport should conform, as much as practicable, with the design criteria in the Heliport Design Guide (FAA Advisory Circular 150/5390-1B) and any subsequent amendments. *(Indiana Department of Transportation; 105 IAC 3-3-9; filed Jan 6, 1983, 1:55 p.m.: 6 IR 311; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-4-9) to Indiana Department of Transportation (105 IAC 3-3-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 3-3-10 Alteration or expansion of an existing public-use airport**

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 10. (a) No municipality or person shall make any alteration or expansion to a public-use airport without prior written approval from the department. Application for approval of an alteration or expansion shall be made by filing a copy of either FAA Form 7480-1, "Notice of Landing Area Proposal" or FAA Form 7460-1, "Notice of Proposed Construction or Alteration", with the department. The department shall not withhold approval for any alteration or expansion project at an airport which holds a valid Air Carrier Operating Certificate issued under Federal Aviation Regulations, Part 139. The phrase "alteration or expansion" shall include, but not be limited to, any of the following:

- (1) any change in the length, width, direction or surface of runways or landing strips;
- (2) construction or installation of any building or other obstacle on the airport property; including aircraft parking or tiedown areas;
- (3) change in any marking or lighting facilities.

(b) Subsequent evidence shall be given by the applicant that airspace determination is approved by the FAA. This section of the regulation (100 IAC 3-4) *[this rule]* shall not apply to any airport improvement project that is funded in part by federal and/or state funds. *(Indiana Department of Transportation; 105 IAC 3-3-10; filed Jan 6, 1983, 1:55 p.m.: 6 IR 312; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-4-10) to Indiana Department of Transportation (105 IAC 3-3-10) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 3-3-11 Annual operating certificates of approval**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-21-1

Sec. 11. (a) It shall be unlawful for a municipality or person to initiate operations at a public-use airport without first being issued an operating certificate of approval by the department; however, the department will issue a certificate to an airport which already holds a valid Air Carrier Operating Certificate issued under Federal Aviation Regulations, 14 CFR 139.

(b) It shall be unlawful for a municipality or person to continue to operate a public-use airport for which an annual operating certificate of approval has not been issued by the department, except as otherwise provided in this section.

(c) All public-use airports must be inspected at least once a year by the department and must conform to the minimum safety standards established in this subsection prior to receiving an operating certificate of approval unless the airport already holds a valid Air Carrier Operating Certificate issued under 14 CFR 139. Compliance with these minimum safety standards is required at all times in order to maintain a valid operating certificate of approval. These standards do not apply to public-use heliports, seaplane bases, or ultralight flightparks. Minimum safety standards shall be as follows:

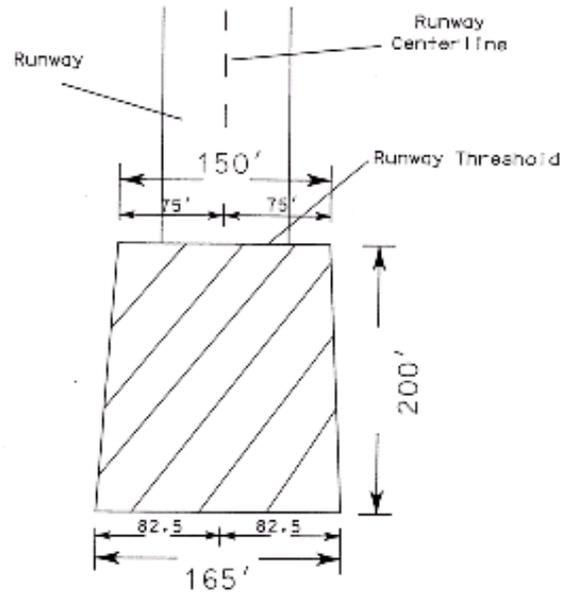
(1) Physical standards as follows:

- \*Minimum usable runway length 2,000 feet
- Minimum width for:
  - \*\*Runway safety area 150 feet
  - Paved runway 40 feet
  - Turf runway 100 feet
- Minimum distance between runway centerline and:
  - Building restriction line 150 feet
  - Edge of tie-down area 125 feet
  - Taxiway centerline 100 feet
- Approach and departure surface width at:
  - \*\*\*Threshold of runway 150 feet
  - 4,000 feet from threshold 350 feet

\*If there is more than one (1) runway at the airport, only one (1) runway must meet the two thousand (2,000) feet minimum usable length requirement; however, all other runways must have at least one thousand five hundred (1,500) feet minimum usable length.

\*\*Although the minimum standard width for a runway safety area is one hundred fifty (150) feet, low crops, such as soybeans, alfalfa, and wheat, may be grown within the runway safety area beginning no closer than fifty (50) feet from the runway centerline. High crops, such as corn and sorghum, must not be grown in the one hundred fifty (150) feet runway safety area.

\*\*\*All crops are considered a ten (10) foot obstruction because of transient farm machinery used in farming the crops. Therefore, no crops may be grown in the area crosshatched in the following illustration:



(2) A public-use airport which has two (2) or more intersecting runways where aircraft must operate out of the sight of each other must have warning signs posted at the departure end of each runway or at the taxiway entrance to the runway. The warning signs must be clearly visible and distinguishable from at least one hundred (100) feet away and shall include language which clearly indicates the inherent danger. The language recommended by the department is "Warning: Aircraft Using Runway 4/22 Cannot Be Seen."

(3) Airport and runway markings as follows:

(A) All paved runways must be marked in accordance with a marking diagram provided by the department, which will include, at a minimum, runway numbers and centerline.

(B) Boundary markers for turf runways will be required if the usable landing area is not clearly defined as observed from an altitude of one thousand five hundred (1,500) feet above ground level. Markers must consist of orange traffic cones or such other material approved by the department.

(C) Turf runway thresholds must be marked with orange traffic cones or such other material approved by the department and must consist of three (3) cones placed perpendicular to the runway centerline on both sides of the runway, located no further than ten (10) feet from the longitudinal edges of the runway.

(D) Threshold markers for all runways, whether paved or turf, must be located such that they will provide, at a minimum, the following:

- (i) Fifteen (15) feet vertical clearance over all public-use roads at a twenty (20) to one (1) glide angle taken from such thresholds.

(ii) Twenty-three (23) feet vertical clearance over all railroads at a twenty (20) to one (1) glide angle taken from such thresholds.

(iii) At a twenty (20) to one (1) glide angle commencing at such thresholds, clearance over all objects within the approach and departure surface symmetrical about the extended centerline of the runway for a distance of four thousand (4,000) feet from such thresholds. (See also subdivision (1).)

(4) Airport and runway lighting as follows:

(A) A public-use airport which is open for nighttime operations must have an operating lighting system which complies with this subdivision and a lighted wind indicator.

(B) The lighting system may be operated:

- (i) on a photo cell;
- (ii) by radio control; or
- (iii) manually based on a prior request.

Operating information must be submitted for publication in the airport facility directory.

(C) Runway lights must meet or exceed the following minimum standards:

- (i) Have clear lenses.
- (ii) Be located no more than ten (10) feet off of the edge of a paved runway.
- (iii) Be located on the edge of a turf runway.
- (iv) Be uniformly placed and not exceed two hundred (200) feet between lights except where a taxiway intersects the runway.
- (v) Not exceed thirty (30) inches above ground level in height.

(D) Taxiway lights must meet or exceed the following minimum standards:

- (i) Be blue in color.
- (ii) Be located no more than ten (10) feet off of the edge of a paved taxiway.
- (iii) Be located on the edge of a turf taxiway.
- (iv) Be uniformly placed and not exceed two hundred (200) feet between lights except where the taxiway intersects another taxiway.
- (v) Not exceed thirty (30) inches above ground level in height.

(E) Threshold lights must meet or exceed the following minimum standards:

- (i) Be green in color.
- (ii) Be located to provide minimum obstruction clearance.
- (iii) Consist of a minimum of three (3) lights on each side of the runway perpendicular to the runway centerline.

(F) Lights between the end of a runway and relocated or displaced runway threshold must meet or exceed the following minimum standards:

(i) Be red in color.

(ii) Be located no more than ten (10) feet off of the edge of a paved runway.

(iii) Be located on the edge of a turf runway.

(iv) Not exceed thirty (30) inches above ground level in height.

The minimum standards in clauses (C) through (F) shall not apply to an airport which has an operational lighting system that was funded in whole or in part by federal or state funds.

(5) In addition to complying with the minimum safety standards in subdivision (4), all public-use airport owners and operators shall continuously maintain aircraft operational areas on the airport. All aircraft operational areas on the airport should be inspected at least once a day. In addition, it is the responsibility of the airport owner or operator to identify, assess, and disseminate information by notices to airmen through the appropriate Federal Aviation Administration Flight Service Station concerning conditions on or in the vicinity of the airport that affect, or may affect, the safe operation of aircraft.

(6) All public-use airports must have and maintain the following:

(A) At least one (1) wind direction indicator, so located to show a true indication of the wind on the landing area and readily visible to aircraft. A wind indicator must be lighted if the airport is open for night operations.

(B) A telephone available continuously for emergency use and flight plan closing.

(C) An approved segmented circle with runway turn indicators when a nonstandard traffic pattern is used.

(D) A suitable area for parking automobiles, adequately marked off or fenced to prevent dangerous overrunning on to the landing area and aircraft parking area.

(E) A copy of current airport safety rules and regulations posted conspicuously at the airport and filed with the department. The airport rules and regulations should address the following:

(i) Air traffic patterns.

(ii) Taxi instructions.

(iii) Calm wind runway usage.

(iv) Any emergency readiness programs.

*(Indiana Department of Transportation; 105 IAC 3-3-11; filed Jan 6, 1983, 1:55 p.m.: 6 IR 312; filed Jul 18, 1994, 11:00 a.m.: 17 IR 2800; errata filed Oct 17, 1994, 4:00 p.m.: 18 IR 531; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2316; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-4-11) to Indiana Department of Transportation (105 IAC 3-3-11) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-3-12 Requirements for annual operating certificates of approval—heliports and seaplane bases

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 12. (a) All public-use heliports shall be inspected at least once a year by the department and shall maintain compliance with all standards which were required by the department as a condition of receiving a certificate of site approval.

(b) All public-use seaplane bases shall be inspected at least once a year by the department and shall maintain compliance with the following minimum requirements:

(1) The body of water shall have a minimum usable length of at least one (1) mile and shall be of sufficient width and depth to permit the safe operation of aircraft on the surface.

(2) All approaches to the landing area shall be sufficiently clear of obstruction to permit a 20:1 approach angle to the nearest point of the usable landing area, provided that if any structure on the land is located within 300 feet of the centerline of the approach path, such approach angle shall be computed so as to provide a clearance of at least 100 feet above such structure.

(3) Any hazards, including underwater obstructions in the landing, approach, departure and taxi areas shall be marked with durable markers so as to be clearly visible from traffic pattern altitude.

*(Indiana Department of Transportation; 105 IAC 3-3-12; filed Jan 6, 1983, 1:55 p.m.: 6 IR 314; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-4-12) to Indiana Department of Transportation (105 IAC 3-3-12) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-3-13 Waivers

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 13. (a) The department may, in its discretion, waive strict compliance with the minimum safety standards and requirements set forth in section 11(C) and section 12 [of this rule] when it is determined that the public-use airport was in existence at the time this regulation (100 IAC 3-4) [this rule] was adopted, and that the owner of the airport held a valid certificate of approval based on compliance with the then existing minimum safety standards.

(b) All petitions for a waiver shall be on forms prescribed and furnished by the department, shall be sworn to by the applicant and shall contain a clear concise statement of the facts together with a request that a

certain requirement be waived. Any waiver shall be conditional upon compliance with all other non-waived requirements, and said waiver shall remain valid as long as the conditions and circumstances at the airport remain unchanged. *(Indiana Department of Transportation; 105 IAC 3-3-13; filed Jan 6, 1983, 1:55 p.m.: 6 IR 314; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-4-13) to Indiana Department of Transportation (105 IAC 3-3-13) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-3-14 Non-compliance with regulations

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 14. Any public-use airport which is not in compliance with the minimum safety standards (section 11(C) [of this rule]) or requirements of section 12 [of this rule], as determined by a department inspection, shall correct the noted deficiencies within 30 days following notice of the deficiencies from the department. The department will provide technical assistance, as requested by any public-use airport owner or operator, to assist the airport in satisfying the minimum safety standards, however, failure to correct the noted deficiencies within the established time element shall result in the department taking appropriate actions to close the airport pursuant to section 15 of this regulation (100 IAC 3-4) [this rule]. The department will consider any request for a time extension to correct the noted deficiencies when it is determined that such an extension is needed and that the deficiencies will not pose a substantial or immediate threat to public safety or safety in the air. *(Indiana Department of Transportation; 105 IAC 3-3-14; filed Jan 6, 1983, 1:55 p.m.: 6 IR 314; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 3-4-14) to Indiana Department of Transportation (105 IAC 3-3-14) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 3-3-15 Enforcement of department actions

**Authority:** IC 8-9.5-5-8

**Affected:** IC 4-21.5; IC 8-9.5; IC 8-21-1

Sec. 15. (a) The department shall after notice and opportunity for hearing to any holder of a certificate of site approval and/or operating certificate of approval, revoke such certificate(s) and order said public-use airport closed when it shall reasonably determine:

(1) that there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time to develop the site as a public-use airport;

(2) that there has been failure to maintain compliance with the conditions of the certificate(s);

(3) that the physical appearance would indicate that there has been an abandonment of the site as a public-use airport;

(4) that because of change of physical or legal conditions or circumstances that site is no longer suitable for aeronautical purposes for which the approval was granted.

(b) Continued use and operation of a public-use airport without a valid operating certificate of approval shall result in the department invoking the aid of the courts to carry out its orders by injunction or other legal process.

(c) Any person adversely affected by this regulation (100 IAC 3-4) [this rule] or any department orders issued under it may appeal the decision according to the procedures for review set forth in the Indiana Administrative Adjudication Act (Indiana Code 4-22-1, et. seq.).

(d) Upon the abandonment, temporary or permanent change in such status or condition of a public-use airport or site, the owner or operator shall notify the department, in writing, of such abandonment or change immediately, and shall notify the appropriate Federal Flight Service Station (FSS) of such change.

(e) When any public-use airport or runway is closed, whether voluntarily or by order of the department, the owner of the airport shall cause it to be marked in accordance with the FAA Advisory Circular 150/5340-1D Appendix 1 and subsequent amendments. (*Indiana Department of Transportation; 105 IAC 3-3-15; filed Jan 6, 1983, 1:55 p.m.: 6 IR 315; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-15) to Indiana Department of Transportation (105 IAC 3-3-15) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 3-3-16 Inspections**

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 16. An applicant for, or a holder of, a public-use airport operating certificate or site approval shall offer full cooperation to any authorized representative of the department inspecting the airport or airport site. The department is entitled to reasonable access to the lands, buildings, equipment, and operating records of a certificated airport or approved airport site. To fulfill its safety inspection at any airport, state law provides that a person who recklessly prevents or obstructs the department from inspecting an airport commits a Class B misdemeanor. (*Indiana Department of Transportation; 105 IAC 3-3-16; filed Jan 6, 1983, 1:55 p.m.: 6 IR 315; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-16) to

*Indiana Department of Transportation (105 IAC 3-3-16) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 3-3-17 Requirements for private-use airports**

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 17. Sections 18 through 26 of this regulation (100 IAC 3-4) [this rule] shall apply to all private-use airports in the state. (*Indiana Department of Transportation; 105 IAC 3-3-17; filed Jan 6, 1983, 1:55 p.m.: 6 IR 315; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-17) to Indiana Department of Transportation (105 IAC 3-3-17) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 3-3-18 General policy**

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 18. It shall be the policy of the department to encourage and support the establishment of private-use airports in the state and to issue certificates of site approval to all private-use airports meeting the following requirements excepting those requirements which have been waived by the department. (*Indiana Department of Transportation; 105 IAC 3-3-18; filed Jan 6, 1983, 1:55 p.m.: 6 IR 315; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-18) to Indiana Department of Transportation (105 IAC 3-3-18) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 3-3-19 Establishment of airport without site approval unlawful**

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 19. (a) It shall be unlawful for any person to establish, construct, activate or operate any private-use airport without first being issued a certificate of site approval by the department. Depiction of a private-use airport on state aeronautical charts is not required.

(b) A certificate of site approval issued by the department shall remain valid indefinitely, unless it is revoked by the department, pursuant to section 24 of this regulation (100 IAC 3-4) [this rule], or until such time as the airport is closed, whether voluntarily by the owner, or by order of the department or any court of general jurisdiction.

(c) Any person or municipality who desires to open or reactivate any private-use airport which has been closed and/or for which the certificate of site approval has been

revoked by the department must apply for a new certificate of site approval pursuant to section 21 of this regulation (100 IAC 3-4) [this rule]. (*Indiana Department of Transportation; 105 IAC 3-3-19; filed Jan 6, 1983, 1:55 p.m.: 6 IR 315; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-19) to Indiana Department of Transportation (105 IAC 3-3-19) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 3-3-20 Failure to apply for certificate of site approval**

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 20. Failure to apply for a certificate of site approval for a private-use airport from the department as required in section 19 [of this rule] shall result in appropriate actions by the department to close the airport. The department may invoke the aid of any court of general jurisdiction to carry out its orders by injunction or other legal process. (*Indiana Department of Transportation; 105 IAC 3-3-20; filed Jan 6, 1983, 1:55 p.m.: 6 IR 316; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-20) to Indiana Department of Transportation (105 IAC 3-3-20) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 3-3-21 Application for certificate of site approval**

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 21. (a) Application for a certificate of site approval for a private-use airport shall be made on forms prescribed and furnished by the department, and shall be accompanied by:

(1) A section of a current federal or state sectional aeronautical chart or topographic map depicting an area of at least a 25 nautical mile radius surrounding the plotted position of the proposed private-use airport.

(2) A detailed drawing on forms provided by the department, which shows the proposed site and the immediate adjacent area, prepared in such manner as will clearly indicate the initial and ultimate stages of airport development, airport property lines, obstructions, other general characteristics of the airport including distance and direction to the nearest city or town, and depict the air traffic pattern for the proposed private-use airport.

(b) In addition to the information required above, FAA Form 7480-1, "Notice of Landing Area Proposal," as required by FAA, will be furnished by the department

and may be filed along with the state application for site approval.

(c) The applicant for a private-use airport shall have sole responsibility for notifying and satisfying any requirements of a local governing body that has adopted an applicable zoning ordinance. (*Indiana Department of Transportation; 105 IAC 3-3-21; filed Jan 6, 1983, 1:55 p.m.: 6 IR 316; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-21) to Indiana Department of Transportation (105 IAC 3-3-21) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 3-3-22 Standards for issuing certificate of site approval**

**Authority:** IC 8-9.5-5-8

**Affected:** IC 8-9.5; IC 8-21-1

Sec. 22. (a) In determining whether it shall issue a certificate of site approval for any private-use airport, the department shall take into consideration its proposed location, size and layout, whether there are safe areas available for expansion purposes, whether the adjoining area is free from obstructions based on a proper approach ratio, the nature of the terrain, the nature of the uses to which the proposed airport will be put, the possibilities for future development, and such other factors as, under the circumstances, it regards as having an important bearing thereon.

(b) Certificates of site approval may be granted with such restrictions and limitations as the department deems reasonable and necessary for safe airport operations.

(c) A certificate of site approval shall not be issued by the department when the Federal Aviation Administration has issued an objectionable airspace determination.

(d) The following commercial operations are prohibited at private-use airports unless specifically approved by the department: the carrying of passengers or cargo for hire; student instruction; rental or sales of aircraft; sale of aviation fuel or oil; air meets or exhibitions; advertising for any of the above; or any activity which solicits the general public to use the airport.

(e) In addition to the foregoing requirements, a certificate of site approval for a private-use seaplane base shall not be issued by the department unless any governmental body, authority or person having jurisdiction over the body of water has given approval for use of the site as a private-use seaplane base. (*Indiana Department of Transportation; 105 IAC 3-3-22; filed Jan 6, 1983, 1:55 p.m.: 6 IR 316; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-22) to Indiana Department of Transportation (105 IAC 3-3-22) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 3-3-23 Waivers****Authority:** IC 8-9.5-5-8**Affected:** IC 8-9.5; IC 8-21-1

Sec. 23. (a) The department may, in its discretion, waive strict compliance with the requirements set forth in section 22(C) and (D) [of this rule] subject to the following conditions:

(1) When the Federal Aviation Administration has issued an objectionable airspace determination, the department will consider a petition for a waiver if the private-use airport owner changes the airport status to "personal-use" with FAA, and agrees to not have the airport shown on any aeronautical charts. Under no circumstances will the department grant a waiver if the objectionable airspace determination by FAA is due to incompatible air traffic patterns with any other airport, whether private or public-use.

(2) When the owner of a private-use airport petitions the department to issue a waiver concerning the prohibition of commercial operations at the airport, the department will review the request based on the following criteria:

(A) whether the proposed commercial operations are the type that will solicit the general public to use the private-use airport; and

(B) whether the design and layout of the private-use airport would satisfy the minimum safety standards and requirements set forth in sections 11(C) or 12 [of this rule] and required of all public-use airports. Any waiver of commercial operations by the department at a private-use airport does not authorize the use of the airport by any person or municipality other than the owner and persons specifically authorized by the owner of the private-use airport.

(b) All petitions for a waiver shall be on forms prescribed and furnished by the department, shall be sworn to by the applicant and shall contain a clear concise statement of the facts together with a request that a certain requirement be waived. Any waiver granted by the department shall remain valid as long as the conditions and circumstances at the airport remain unchanged. (*Indiana Department of Transportation; 105 IAC 3-3-23; filed Jan 6, 1983, 1:55 p.m.: 6 IR 316; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Transportation (100 IAC 3-4-23) to Indiana Department of Transportation (105 IAC 3-3-23) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 3-3-24 Enforcement of department actions****Authority:** IC 8-9.5-5-8**Affected:** IC 4-21.5; IC 8-9.5; IC 8-21-1

Sec. 24. (a) The department shall after notice and opportunity for hearing to any holder of a certificate of site approval, revoke such certificate and order said private-use airport closed when it shall reasonably determine:

(1) that there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time to develop the site as a private-use airport;

(2) that there has been failure to maintain compliance with the conditions of the certificate of site approval;

(3) that the physical appearance would indicate that there has been an abandonment of the site as a private-use airport;

(4) that because of change of physical or legal conditions or circumstances that site is no longer suitable for aeronautical purposes for which the approval was granted.

(b) Any person adversely affected by this regulation (100 IAC 3-4) [this rule] or any department orders issued under it may appeal the decision according to the procedures for review set forth in the Indiana Administrative Adjudication Act (Indiana Code 4-22-1, et. seq.). (*Indiana Department of Transportation; 105 IAC 3-3-24; filed Jan 6, 1983, 1:55 p.m.: 6 IR 317; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Transportation (100 IAC 3-4-24) to Indiana Department of Transportation (105 IAC 3-3-24) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 3-3-25 Inspections****Authority:** IC 8-9.5-5-8**Affected:** IC 8-9.5; IC 8-21-1

Sec. 25. The department may, in its discretion, inspect any private-use airport to determine whether a certificate of site approval should be issued, to investigate any complaints received concerning the airport, to determine whether a petition for a waiver should be granted, or for any other probable cause. An applicant for, or a holder of, a private-use airport certificate of site approval shall offer full cooperation to any authorized representative of the department inspecting the airport or airport site. To fulfill its safety inspection at any airport, state law provides that a person who recklessly prevents or obstructs the department from inspecting an airport commits a Class B misdemeanor. (*Indiana Department of Transportation; 105 IAC 3-3-25; filed Jan 6, 1983, 1:55 p.m.: 6 IR 317; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Transportation (100 IAC 3-4-25) to Indiana Department of Transportation (105 IAC 3-3-25) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 3-3-26 Change of status or abandonment****Authority:** IC 8-9.5-5-8**Affected:** IC 8-9.5; IC 8-21-1

Sec. 26. (a) Any person who desires to expand and change a private-use airport to a public-use airport must first apply to the department for a new certificate of site approval for a public-use airport as specified in section 6 of this regulation (100 IAC 3-4) [this rule].

(b) Upon the abandonment or closure of any private-use airport, the owner or operator shall notify the department, in writing, of such abandonment or closure immediately, and shall notify the appropriate Flight Service Station (FSS) of such closing. (*Indiana Department of Transportation; 105 IAC 3-3-26; filed Jan 6, 1983, 1:55 p.m.: 6 IR 317; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 3-4-26) to Indiana Department of Transportation (105 IAC 3-3-26) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 3-3-27 Requirements for temporary airports****Authority:** IC 8-9.5-5-8**Affected:** IC 8-9.5; IC 8-21-1

Sec. 27. Sections 28 through 31 of this regulation (100 IAC 3-4) [this rule] shall apply to all temporary airports in the state. (*Indiana Department of Transportation; 105 IAC 3-3-27; filed Jan 6, 1983, 1:55 p.m.: 6 IR 318; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 3-4-27) to Indiana Department of Transportation (105 IAC 3-3-27) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 3-3-28 Establishment of temporary airport without approval unlawful****Authority:** IC 8-9.5-5-8**Affected:** IC 8-9.5; IC 8-21-1

Sec. 28. It shall be unlawful for any municipality or person to establish, construct, use or operate any temporary airport without prior written approval from the department. (*Indiana Department of Transportation; 105 IAC 3-3-28; filed Jan 6, 1983, 1:55 p.m.: 6 IR 318; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 3-4-28) to Indiana Department of Transportation (105 IAC 3-3-28) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 3-3-29 Application for approval of temporary airport****Authority:** IC 8-9.5-5-8**Affected:** IC 8-9.5; IC 8-21-1

Sec. 29. (a) Application for approval of a temporary airport shall be made on forms prescribed and furnished by the department and shall be accompanied by:

(1) A section of a current federal or state sectional aeronautical chart or topographic map depicting an area of at least a 25 nautical mile radius surrounding the plotted position of the proposed temporary airport.

(2) A detailed drawing on forms provided by the department, which shows the dimensions of the proposed airport facilities, property lines, any obstructions in the approach areas, and the air traffic pattern for the proposed temporary airport.

(3) Written consent of property owner(s) unless applicant holds title in fee simple to the proposed site.

(4) A statement pertaining to the type of temporary use proposed for the site.

(b) Such application must be received by the department at least fifteen (15) days prior to the date the applicant wishes to use the area. This time requirement may be waived where it is clearly shown that an emergency exists. (*Indiana Department of Transportation; 105 IAC 3-3-29; filed Jan 6, 1983, 1:55 p.m.: 6 IR 318; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 3-4-29) to Indiana Department of Transportation (105 IAC 3-3-29) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 3-3-30 Standards for issuing notices****Authority:** IC 8-9.5-5-8**Affected:** IC 8-9.5; IC 8-21-1

Sec. 30. (a) The department shall inspect the proposed site for a temporary airport and if it finds the site to be of such size and nature, in the opinion of the department, as to be safe for use by the type of aircraft that will be used in the operations and to have clear and unobstructed approaches to the landing area, the department shall issue an approval notice.

(b) The department may issue an approval notice for a temporary airport for any specified amount of time, not to exceed thirty (30) days. Upon a clear showing by the applicant that an emergency exists, the department may grant time extensions to the approval notice. (*Indiana Department of Transportation; 105 IAC 3-3-30; filed Jan 6, 1983, 1:55 p.m.: 6 IR 318; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Transportation (100 IAC 3-4-30) to Indiana Department of Transportation (105 IAC 3-3-30) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 3-3-31 Failure to apply for approval notice****Authority:** IC 8-9.5-5-8**Affected:** IC 8-9.5; IC 8-21-1

Sec. 31. Failure to apply to the department for approval notice for a temporary airport at least 15 days prior to beginning operations shall result in appropriate actions by the department to close the airport. The department may invoke the aid of any court of general jurisdiction to carry out its orders by injunction or other legal process. (*Indiana Department of Transportation; 105 IAC 3-3-31; filed Jan 6, 1983, 1:55 p.m.: 6 IR 318; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-31) to Indiana Department of Transportation (105 IAC 3-3-31) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 3-3-32 Specific exemptions

Authority: IC 8-9.5-5-8

Affected: IC 8-9.5; IC 8-21-1; IC 15-3-3.6-6

Sec. 32. This regulation (100 IAC 3-4) [*this rule*] pertaining to the department's authority to issue certificates of site approval, operating certificates of approval, and approval notices does not apply to provisional landing sites.

A provisional landing site is any area, site or location which is not classified as an airport, has no based aircraft, and is only used on an occasional basis with the landowner's permission by helicopters, lighter-than-air aircraft, or aircraft engaged in aerial applications to agricultural lands in accordance with the following statutory restrictions:

(a) Agricultural [*sic.*] applications if the applicator:

(1) is licensed as a pesticide operator by the state chemist and has met the requirements of Indiana Code 15-3-3.6-6, and

(2) has received permission to use the land for agricultural aviation purposes from the owner or lessee of the land.

(b) Helicopters if the operator of the helicopter:

(1) meets FAA qualifications for operation of the specific aircraft;

(2) determines that air routes to and from the site are acceptable to the aircraft's limitations and that proposed routes in congested areas provide for emergency landings in the event that an autorotation descent is necessary;

(3) follows all FAA regulations covering landings in the event that an autorotation descent is necessary;

(4) has received permission to use the site from the owner or lessee of the site.

(c) Lighter-than-air aircraft. However, no person may operate a lighter-than-air aircraft from any landing site unless the pilot is in compliance with:

(1) all applicable federal air regulations, and

(2) the department's rules and regulations which relate to the operation of lighter-than-air aircraft (100 IAC 4-1) [105 IAC 4-1].

(*Indiana Department of Transportation; 105 IAC 3-3-32;*

*filed Jan 6, 1983, 1:55 p.m.: 6 IR 318; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-32) to Indiana Department of Transportation (105 IAC 3-3-32) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 3-3-33 Penalties

Authority: IC 8-9.5-5-8

Affected: IC 8-9.5; IC 8-21-1

Sec. 33. (a) State law provides that any person who does not fall within the exemptions set forth above and who uses a provisional landing site for agricultural applications or helicopter operations commits a Class B infraction.

(b) State law provides that any person who operates a lighter-than-air aircraft in violation of this exemption commits a Class B infraction. (*Indiana Department of Transportation; 105 IAC 3-3-33; filed Jan 6, 1983, 1:55 p.m.: 6 IR 319; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-33) to Indiana Department of Transportation (105 IAC 3-3-33) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 3-3-34 Severability

Authority: IC 8-9.5-5-8

Affected: IC 8-9.5; IC 8-21-1

Sec. 34. The provisions of this regulation (100 IAC 3-4) [*this rule*] are severable, and the finding by any court that any provision is invalid does not affect the validity of the remaining portions. (*Indiana Department of Transportation; 105 IAC 3-3-34; filed Jan 6, 1983, 1:55 p.m.: 6 IR 319; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 3-4-34) to Indiana Department of Transportation (105 IAC 3-3-34) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### Rule 4. Ultralight Flightparks

105 IAC 3-4-1	Purpose
105 IAC 3-4-2	Application for certified ultralight flightparks
105 IAC 3-4-3	Standards for certified ultralight flightparks
105 IAC 3-4-4	Alteration or expansion of existing certified ultralight flightparks
105 IAC 3-4-5	Noncompliance
105 IAC 3-4-6	Enforcement of department actions
105 IAC 3-4-7	Inspections

### 105 IAC 3-4-1 Purpose

Authority: IC 8-23-2-6

Affected: IC 8-21-1

Sec. 1. The purpose of this rule is to provide a volun-

tary certification program for ultralight flightparks that will provide guidance and standardization for the preferred characteristics desired for modern ultralight flightparks. Ultralight flightparks are areas, sites, or locations specifically adapted and used for the landing and taking off of ultralights. While mandatory standards have been deemed unnecessary and unduly burdensome to the ultralight industry, the continuing development of ultralights has made it desirable to institute this program to make the public user aware of those flightparks that meet the criteria for maximizing safety in operations. Failure to participate in this certification program should not be construed as being deficient, rather those flightparks participating should be considered as meeting all desirable standards for modern ultralight flightparks. (*Indiana Department of Transportation; 105 IAC 3-4-1; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2318; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 3-4-2 Application for certified ultralight flightparks**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-21-1

Sec. 2. Proposed or existing ultralight flightparks that desire to be certified shall file an application on forms and in the manner prescribed by the Indiana department of transportation and shall be accompanied by the following:

- (1) A section of a federal or state sectional aeronautical chart depicting an area of at least a twenty-five (25) nautical mile radius surrounding the plotted position of the proposed certified ultralight flightpark.
- (2) A detailed drawing on forms provided by the Indiana department of transportation, which will show the proposed site and the immediate adjacent area, prepared in such manner as will:
  - (A) clearly indicate the initial and ultimate stages of:
    - (i) flightpark development;
    - (ii) flightpark property lines;
    - (iii) obstructions; and
    - (iv) other general characteristics of the area, including distance and direction to the nearest city or town; and
  - (B) depict the air traffic pattern for the proposed certified ultralight flightpark.
- (3) Written consent of the property owner unless the applicant holds title in fee simple to the proposed site.
- (4) A statement of the location of any sanitary landfills or open dumps within two (2) miles of the proposed certified ultralight flightpark boundaries.
- (5) Evidence that the applicant has obtained approval from the local zoning authority to establish a certified

ultralight flightpark at the proposed site.

(6) Federal Aviation Administration Form 7480-1 "Notice of Landing Area Proposal", as required by the Federal Aviation Administration, is to be filed along with the state application for certification of an ultralight flightpark.

(*Indiana Department of Transportation; 105 IAC 3-4-2; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2319; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 3-4-3 Standards for certified ultralight flightparks**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-21-1

Sec. 3. (a) In determining whether it shall issue certification of an ultralight flightpark, the Indiana department of transportation may take into consideration the following:

- (1) The proposed:
  - (A) location;
  - (B) size;
  - (C) layout;
  - (D) expansion options; and
  - (E) approach ratios.
- (2) The nature of the terrain.
- (3) The nature of the uses to which the proposed certified ultralight flightpark will be put.
- (4) Such other factors as, under the circumstances, it regards as having an important bearing thereon, including the physical safety standards prescribed in subsection (d) and any Federal Aviation Administration recommendations from an airspace determination.
- (b) Certification of an ultralight flightpark may be granted with such restrictions and limitations as the Indiana department of transportation deems reasonable and necessary for safe flightpark operations. Examples could include restrictions on nighttime operations or traffic pattern limitations.
- (c) The certification of an ultralight flightpark will not occur if the local governing body has adopted a zoning ordinance and has not given land use approval to establish a certified ultralight flightpark at such site.
- (d) All certified ultralight flightparks must be inspected at every two (2) years by the Indiana department of transportation and must conform to the physical safety standards established in this subsection prior to receiving state certification. Compliance with these minimum safety standards is required at all times in order to maintain state certification. The physical safety standards shall be as follows:

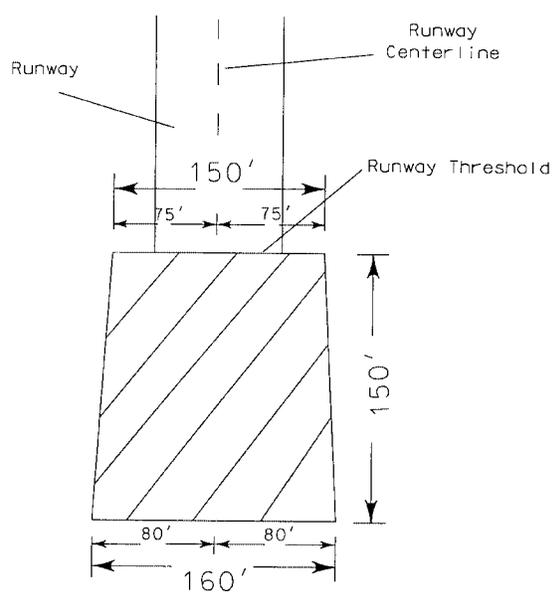
- (1) Physical standards as follows:
 

Minimum usable runway length	1,000 feet
Minimum width for:	
Paved runway	40 feet

Turf runway	60 feet
*Runway safety area	150 feet
Minimum distance between runway centerline and:	
Building restriction line	150 feet
Edge of tie-down area	125 feet
Taxiway centerline	100 feet
Approach and departure surface width at:	
**Threshold of runway	150 feet
3,000 feet from the threshold	350 feet

\*Although the minimum safety standard width for a runway safety area is one hundred fifty (150) feet, low crops, such as soybeans, alfalfa, and wheat, may be grown within the runway safety area beginning no closer than fifty (50) feet from the runway centerline. High crops, such as corn and sorghum, must not be grown in the one hundred fifty (150) foot runway safety area.

\*\*All crops are considered a ten (10) foot obstruction because of transient farm machinery used in farming the crops. Therefore, no crops may be grown in the area crosshatched in the illustration below:



(2) A certified ultralight flightpark that has two (2) or more intersecting runways where ultralights must operate out of the sight of each other must have warning signs posted at the departure end of each runway or at the taxiway entrance to the runway. The warning signs must be clearly visible and distinguishable from at least one hundred (100) feet away and shall include language that clearly indicates the inherent danger. The language recommended by the department is "Warning: Ultralights Using Runway 9/27 Cannot Be Seen."

(3) Ultralight flightpark and runway markings as follows:  
(A) All paved runways must be marked with runway numbers and centerline.

(B) Boundary markers for turf runways will be required if the usable landing area is not clearly defined as observed from an altitude of one thousand five hundred (1,500) feet above ground level. Markers must consist of orange traffic cones or such other material approved by the Indiana department of transportation.

(C) Turf runway thresholds must be marked with orange traffic cones or such material approved by the Indiana department of transportation and must consist of three (3) cones placed perpendicular to the runway centerline on both sides of the runway, located no further than ten (10) feet from the longitudinal edges of the runway.

(D) Threshold markers for all runways, whether paved or turf, must be located such that they will provide, at a minimum, the following:

(i) Fifteen (15) feet vertical clearance over all public use roads at a fifteen (15) to one (1) glide angle taken from such threshold.

(ii) Twenty-three (23) feet vertical clearance over all railroads at a fifteen (15) to one (1) glide angle taken from such threshold.

(iii) At a fifteen (15) to one (1) glide angle commencing at such thresholds, clearance over all objects within the approach and departure surface symmetrical about the extended centerline of the runway for a distance of three thousand (3,000) feet from such thresholds. (See also subdivision (1).)

(4) In addition to complying with the physical safety standards set forth in this subsection, all certified ultralight flightpark owners and operators shall continuously maintain ultralight operational areas on the ultralight flightpark. All operational areas on the ultralight flightpark should be inspected at least once a day. In addition, it is the responsibility of the ultralight flightpark owner or operator to identify, assess, and disseminate information by notices to airmen through the appropriate Federal Aviation Administration Flight Service Station concerning conditions on or in the vicinity of the ultralight flightpark that affect the safe operation of ultralights.

(5) No night operations will be permitted at certified ultralight flightparks.

(6) All certified ultralight flightparks must have and maintain the following:

(A) At least one (1) wind direction indicator that shows a true indication of the wind on the landing area and is readily visible to ultralights.

(B) A telephone must be made available during operational hours.

(C) An approved segmented circle with runway turn indicators when a nonstandard traffic pattern is used.

(D) A suitable area for parking automobiles, adequately marked off or fenced to prevent dangerous overrunning of the landing area and ultralight parking area.

(E) A copy of current ultralight flightpark safety rules and regulations posted conspicuously at the ultralight flightpark and filed with the Indiana department of transportation. The ultralight flightpark rules and regulations should address the following:

- (i) Air traffic patterns.
- (ii) Taxi instructions.
- (iii) Calm wind runway usage.
- (iv) Any emergency readiness programs.

*(Indiana Department of Transportation; 105 IAC 3-4-3; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2319; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### **105 IAC 3-4-4 Alteration or expansion of existing certified ultralight flightparks**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-21-1

Sec. 4. Any alteration or expansion to a certified ultralight flightpark should be approved by the Indiana department of transportation prior to construction to ensure certification can be maintained. Application for approval of an alteration or expansion may be made by filling [*sic., filing*] a copy of either Federal Aviation Administration Form 7480-1, "Notice of Landing Area Proposal" or Federal Aviation Administration Form 7460-1, "Notice of Proposed Construction or Alteration" with the Indiana department of transportation. As used in this section, "alteration or expansion" includes, but is not limited to, any of the following:

- (1) Any change in the length, width, direction, or surface of runways or landing strips.
- (2) Construction or installation of any building or other obstacle on the certified ultralight flightpark property, including ultralight parking or tie-down areas.
- (3) Change in any markings.

*(Indiana Department of Transportation; 105 IAC 3-4-4; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2320; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### **105 IAC 3-4-5 Noncompliance**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-21-1

Sec. 5. Any certified ultralight flightpark not in compliance with the minimum safety standards in section 3 of this rule, as determined by an Indiana department of

transportation inspection, shall correct the noted deficiencies within thirty (30) days following notice of the deficiencies from the Indiana department of transportation. The Indiana department of transportation will provide technical assistance, as requested by any certified ultralight flightpark owner or operator, to assist the flightpark in satisfying the minimum physical standards; however, failure to correct the noted deficiencies within the established time element shall result in appropriate actions taken by the Indiana department of transportation to revoke state certification under section 6 of this rule. *(Indiana Department of Transportation; 105 IAC 3-4-5; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2321; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### **105 IAC 3-4-6 Enforcement of department actions**

**Authority:** IC 8-23-2-6

**Affected:** IC 4-21.5-3; IC 8-21-1

Sec. 6. (a) The Indiana department of transportation shall, after notice and opportunity for hearing to any certified ultralight flightpark, revoke such certification when it reasonably determines the following:

- (1) There has been failure to maintain compliance with the conditions of the certification.
- (2) The physical appearance would indicate that there has been abandonment of the site as a certified ultralight flightpark.
- (3) That because of physical or legal conditions or circumstances that site no longer meets the standards by which the approval was granted.

(b) Any person adversely affected by this rule or any orders of the Indiana department of transportation issued under this rule may appeal the decision according to the procedures for review set forth in IC 4-21.5-3.

(c) When any certified ultralight flightpark or runway is abandoned or closed voluntarily, the owner shall file the Federal Aviation Administration Form 7480 with the Federal Aviation Administration and a copy to the Indiana department of transportation. The owner of the flightpark shall also mark the airport in accordance with the Federal Aviation Administration Advisory Circular 150/5340-1G Section 4 "Standards for Airport Markings", effective September 27, 1993, which is hereby incorporated by reference.

(d) If certification is revoked, the ultralight flightpark shall not be construed as deficient, rather the Indiana department of transportation shall no longer endorse the ultralight flightpark as meeting preferred characteristics that maximize the safety of modern ultralight flightparks. *(Indiana Department of Transportation; 105 IAC 3-4-6; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2321; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

**105 IAC 3-4-7 Inspections****Authority:** IC 8-23-2-6**Affected:** IC 8-21-1

Sec. 7. An applicant for or the holder of a certificate for an ultralight flightpark shall offer full cooperation to any authorized representative of the Indiana department of transportation inspecting the ultralight flightpark. The Indiana department of transportation is entitled to reasonable access to the lands, buildings, equipment, and operating records of a certified ultralight flightpark. To fulfill safety inspections at any certified ultralight flightpark, state law provides that a person who recklessly prevents or obstructs the Indiana department of transportation from inspecting an ultralight flightpark commits a Class B misdemeanor. (*Indiana Department of Transportation; 105 IAC 3-4-7; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2321; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

## ARTICLE 4. LIGHTER-THAN-AIR AIRCRAFT

## Rule 1. General Provisions

**Rule 1. General Provisions**

105 IAC 4-1-1	Applicability
105 IAC 4-1-2	Operations
105 IAC 4-1-3	Area of operations
105 IAC 4-1-4	Minimum standards

**105 IAC 4-1-1 Applicability****Authority:** IC 8-21-1-8**Affected:** IC 8-21-1-10.1

Sec. 1. Applicability. These regulations shall apply to any lighter-than-air aircraft and to any pilot-in-command of a lighter-than-air aircraft, including free balloons (both hot air with and without an airborne heater and gas) and airships (both hot air with and without an airborne heater and gas), but specifically excluding any moored balloons, kites, unmanned rockets and unmanned free balloons and any lighter-than-air aircraft that are not subject to Federal Aviation Regulations as now in effect or hereafter amended, operating within the territorial limits of the State of Indiana. (*Indiana Department of Transportation; 105 IAC 4-1-1; filed Mar 26, 1980, 4:05 p.m.: 3 IR 925; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)  
**NOTE:** Transferred from Department of Transportation (100 IAC 4-1-1) to Indiana Department of Transportation (105 IAC 4-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 4-1-2 Operations****Authority:** IC 8-21-1-8**Affected:** IC 8-21-1-10.1

Sec. 2. Operations. All operations of balloons, airships, and other lighter-than-air aircraft operating in the State of Indiana shall be in compliance with the Federal Aviation Regulations and the Regulations of the Aeronautics Commission of Indiana.

All lighter-than-air aircraft shall carry airworthiness certificates, registrations, certificates of inspections, and display the state registration sticker with the airworthiness certificate.

For purposes of this article, a person, other than a student pilot, shall be deemed to be the pilot-in-command with respect to any period of time during which he is manipulating the controls of a lighter-than-air aircraft or acting as flight instructor on said aircraft. A student pilot shall be deemed to be the pilot-in-command only when he is manipulating the controls of a lighter-than-air aircraft during a solo flight.

Each pilot-in-command of lighter-than-air aircraft shall assure the following items:

(1) Before beginning a flight, familiarize himself/herself with all available information concerning that flight including weather reports and forecasts.

(2) All flights shall be properly logged in the pilot log book and shall contain information locating initial takeoff and final landing sites, date, time of flight and number of intermediate landings.

(for the purposes of this article, an intermediate landing, shall be any contact of the aircraft with earth or any object thereon).

(3) Minimum fuel required for initial takeoff will be sufficient to allow for an estimated 30 minutes of flight on hot air balloons with airborne heaters.

(4) Maximum flight time will allow for a minimum of 15% usable fuel, by volume, to remain in one tank at the time of final landing.

(5) Before inflation and initial takeoff passengers and crew members shall be instructed as to the appropriate procedures relating to the operation of said aircraft, the retrieval of said aircraft after final landing and the appropriate methods of crowd control to promote the safety of persons and property within the near vicinity of said aircraft.

(*Indiana Department of Transportation; 105 IAC 4-1-2; filed Mar 26, 1980, 4:05 p.m.: 3 IR 925; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)  
**NOTE:** Transferred from Department of Transportation (100 IAC 4-1-2) to Indiana Department of Transportation (105 IAC 4-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 4-1-3 Area of operations****Authority:** IC 8-21-1-8**Affected:** IC 8-21-1-8; IC 8-21-1-10.1

Sec. 3. Area of Operations. If a balloon takeoff or landing area is located where operations do not endanger lives or property on the ground and do not interfere with other authorized use of the navigable airspace, the takeoff or landing area need not be approved, licensed or registered by the Commission. Operations at the takeoff or landing area shall be carried out in a prudent manner and with due regard for safety.

(1) The pilot-in-command assumes financial responsibility for any damage caused by the takeoff, landing or the recovery of the balloon.

(2) The pilot-in-command shall make every reasonable effort to contact the property owner on whose property a final landing has been made.

In the case of a Balloon School.

(1) If it is an approved school under Part 141 of the Federal Aviation Regulations, the field must have Aeronautics Commission site approval.

*(Indiana Department of Transportation; 105 IAC 4-1-3; filed Mar 26, 1980, 4:05 p.m.: 3 IR 925; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 4-1-3) to Indiana Department of Transportation (105 IAC 4-1-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### 105 IAC 4-1-4 Minimum standards

**Authority:** IC 8-21-1-8

**Affected:** IC 8-21-1-8; IC 8-21-1-10.1

Sec. 4. Minimum Standards. All pilots-in-command and/or owners of hot air balloons with airborne heaters shall comply with the following equipment requirements to be carried on board the balloon in addition to those items normally required by the aircraft manufacturer or the Federal Aviation Regulations. Aircraft normally required to carry items as listed shall not be required to duplicate.

(1) A dry type fire extinguisher of the type and kind normally used to extinguish electrical and liquid fuel fires.

(2) At least two methods of pilot light ignition such as a stirker [*sic.*] and a cigarette lighter, or two strikers or a stirker [*sic.*] and matches.

*(Indiana Department of Transportation; 105 IAC 4-1-4; filed Mar 26, 1980, 4:05 p.m.: 3 IR 926; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 4-1-4) to Indiana Department of Transportation (105 IAC 4-1-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### ARTICLE 5. RAILROADS

Rule 1. Tariffs and Rates

Rule 2. Abandonment of Railway Stations; Establishment of Interlocking Systems

Rule 3. Reporting of Railroad Accidents

Rule 4. Railroad Construction; Lateral and Vertical Clearance Requirements

Rule 5. Rail Service Continuation Subsidies

Rule 6. Railroad Policemen; Basic Training and Fitness Standards

Rule 7. Downgrading of Rail-Highway Crossing Protection

Rule 8. Crossing Construction or Relocation

Rule 9. Filing of Railroad Operating Information

Rule 10. Opening and Closing Railroad Crossings

#### Rule 1. Tariffs and Rates

105 IAC 5-1-1 Policy

105 IAC 5-1-2 Standards and procedures

105 IAC 5-1-3 Railroad tariffs; filing notice

105 IAC 5-1-4 Content of notice

105 IAC 5-1-5 Defect in notice; consequence

105 IAC 5-1-6 Commencement of proceedings

105 IAC 5-1-7 Duration of suspension period

105 IAC 5-1-8 Grounds for suspension

105 IAC 5-1-9 Market dominance

105 IAC 5-1-10 Reasonableness of rate; evaluation

105 IAC 5-1-11 Burden of proof

105 IAC 5-1-12 Rate flexibility

105 IAC 5-1-13 Suspension actions; monetary adjustments

105 IAC 5-1-14 Filing procedures

105 IAC 5-1-15 Refund or collection; determination of commission

105 IAC 5-1-16 Monetary adjustments

105 IAC 5-1-17 Intramodal competition

105 IAC 5-1-18 Intermodal competition

105 IAC 5-1-19 Geographic competition

105 IAC 5-1-20 Product competition

105 IAC 5-1-21 Formal complaints; general allegations

105 IAC 5-1-22 Formal complaints; damages sought

105 IAC 5-1-23 Formal complaints; general

105 IAC 5-1-24 Formal complaints; tariff or schedule references

105 IAC 5-1-25 Formal complaints; prayers for relief

105 IAC 5-1-26 Formal complaints; amended and supplemental

105 IAC 5-1-27 Formal complaints; answers and cross complaints

105 IAC 5-1-28 Formal complaints; satisfaction

105 IAC 5-1-29 Formal complaints; signature and verification

105 IAC 5-1-30 Formal complaints; certificate of service

105 IAC 5-1-31 Statements of claimed damages; commission findings

105 IAC 5-1-32 Zone of rate flexibility

105 IAC 5-1-33 Market dominance; rates established

105 IAC 5-1-34 Rail rates; reasonable minimum

105 IAC 5-1-35 Reasonableness of existing rates; burden of proof

105 IAC 5-1-36 Rate adjustments; non-applicability

105 IAC 5-1-37 Reparation statement

105 IAC 5-1-38 Rail carrier contracts

105 IAC 5-1-39 Contract implementation date

105 IAC 5-1-40 Contracts; filing; complaints; review

105 IAC 5-1-41 Common carrier responsibilities

105 IAC 5-1-42	Contract enforcement
105 IAC 5-1-43	Agricultural commodities contracts
105 IAC 5-1-44	Form of contracts
105 IAC 5-1-45	Filing of contract and summary; availability
105 IAC 5-1-46	Contract title page
105 IAC 5-1-47	Contract numbering system
105 IAC 5-1-48	Contract summary contents
105 IAC 5-1-49	Contract summary availability
105 IAC 5-1-50	Notice of filing
105 IAC 5-1-51	Exemption proceedings

### 105 IAC 5-1-1 Policy

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 1. Public Law 96-448, "The Staggers Rail Act of 1980", requires the states which wish to retain jurisdiction to bring their standards and procedures for regulating railroad rates, classifications, rules and practices into conformity with the Interstate Commerce Act. It is the intent of Congress that railroad companies receive adequate revenues through regulatory encouragement of modal competition, rate flexibility, and relaxed rate reasonableness standards.

Mindful of this commission's obligations to safeguard the public's interests, it shall henceforth be the policy of the public service commission of Indiana to regulate railroad matters in a manner consistent with the standards and procedures set forth by Congress in the Interstate Commerce Act. (*Indiana Department of Transportation; 105 IAC 5-1-1; filed May 18, 1983, 2:18 p.m.: 6 IR 1200; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)  
**NOTE:** Transferred from Department of Transportation (100 IAC 6-1-1) to Indiana Department of Transportation (105 IAC 5-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-2 Standards and procedures

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 2. The Staggers Act requires the states to adopt uniform standards and procedures for regulating railroad rates, rules and practices which are in accord with the provisions of the Act. This and the following administrative rules constitute Indiana's revised approach to railroad regulation. The standards and procedures included in 170 IAC 3-1.1-3 through 3-1.1-56 [sections 3 through 51 of this rule] supersede any previous rules or regulations to the extent that the previous rules or regulations might be in conflict with them.

Indiana shall not exercise jurisdiction over general rate increases, inflation-based rate increases, and fuel adjustment surcharges. Further, Indiana shall not require

prejustification of rate increases. These points are treated in 170 IAC 3-1.1-6 through 3-1.1-16 and 170 IAC 3-1.1-21 through 3-1.1-37 [sections 6 through 16 of this rule and sections 21 through 37 of this rule].

The timing for rail rate changes shall be 10 days and 20 days for decreases and increases, respectively. These points are covered in 170 IAC 3-1.1-3 through 3-1.1-5 [sections 3 through 5 of this rule].

Indiana shall complete investigation and suspension cases within five months, although a three month extension may be applied for in each case. Indiana shall not suspend rates on its own motion, and shall not suspend a proposed rate change unless a protestant shows that he is substantially likely to prevail on the merits of his case; that without suspension the proposed rate will cause him substantial injury; and that an investigation with a refund and trust account provision will afford him insufficient protection. Indiana shall handle refund requirements in accordance with the provisions of 49 U.S.C. Sec. 10707. These points are treated in 170 IAC 3-1.1-6 through 3-1.1-16 [sections 6 through 16 of this rule].

In approaching the issue of rate reasonableness, Indiana shall first consider, within 90 days, whether or not the traffic in question is subject to market dominance. Standards for market dominance determinations are treated in 170 IAC 3-1.1-17 through 3-1.1-20 [sections 17 through 20 of this rule]. A finding that no market dominance exists shall be conclusive evidence that a rate is reasonable. Should market dominance be found, a reasonableness determination shall be made based on the principle of railroad revenue adequacy, an evaluation of the ratio of revenue to variable cost for the traffic involved, the revenue contribution of the traffic to the railroad's revenue base, and national energy and transportation goals. These procedures are treated in 170 IAC 3-1.1-6 through 3-1.1-16 [sections 6 through 16 of this rule].

Railroad rates may be altered in accordance with the zone of rate flexibility provisions of 49 U.S.C. Sec. 10707a. These provisions are incorporated in 170 IAC 3-1.1-6 through 3-1.1-16 and 170 IAC 3-1.1-21 through 3-1.1-37 [sections 6 through 16 of this rule and sections 21 through 37 of this rule].

To encourage shipper and railroad planning, Indiana shall regulate intrastate contract rates in accordance with 49 U.S.C. Sec. 10713. These points are treated in 170 IAC 3-1.1-38 through 3-1.1-50.1 [sections 38 through 50 of this rule].

Indiana adopts the applicable provisions of 49 U.S.C. Sec. 10741 on discrimination. Indiana shall not make a finding of discrimination if differences in rates, classification, rules and practices result from differences in service provided.

Discrimination shall not be found to apply to the following sections of 49 U.S.C.:

- (1) Sec. 10713—Contract rates, other than as provided for in subsection (d)(2)(B);
- (2) Sec. 10705a—Surcharges or cancellations;
- (3) Sec. 10728—Separate rates for distinct rail services;
- (4) Rail rates applicable to different routes; or
- (5) Sec. 10751—Business entertainment expenses.

Indiana may undertake an exemption proceeding either on its own motion or upon petition from any interested party. An exemption granted for a class of interstate traffic shall automatically apply in Indiana. Each exemption initiative shall be considered individually, in accordance with the provisions of 170 IAC 3-1.1-56 [section 51 of this rule].

Indiana shall regulate two special classes of rates, limited liability rates and rates on recyclable materials,

in a manner consistent with federal law, specifically 49 U.S.C. Sec. 10730, and 49 U.S.C. Sec. 10731, respectively. Recyclable materials shall be transported at a revenue to variable cost ratio of no more than that allowed by the Staggers Act as amended from time to time. Railroads are free to publish rates under which the liability of the carrier is limited to a value established by the written declaration of the shipper or by written agreement between the shipper and railroad. These points are treated in 170 IAC 3-1.1-6 through 3-1.1-16 [sections 6 through 16 of this rule].

To further clarify the regulatory approach which Indiana will employ, the public service commission of Indiana hereby adopts the following sections of the Interstate Commerce Act as amended by Staggers Rail Act of 1980.

Section 10505	– Exemption
Section 10701a	– Standards for rates for rail carriers
Section 10704(a)(2)(4)	– Adequate revenues
Section 10705	– Authority: through routes, joint classifications, rates and divisions
Section 10705a	– Joint rate surcharges and cancellations
Section 10706	– Rate agreements; exemption from antitrust laws
Section 10707	– Investigation and suspension of rates
Section 10707a	– Zone of rail carrier rate flexibility
Section 10709	– Determination of market dominance
Section 10712	– Inflation-based rate increases
Section 10713	– Contracts
Section 10726	– Long and short haul transportation
Section 10730	– Rates and liability based on value
Section 10731e	– Transportation of recyclable materials
Section 10741	– Rate discrimination
Section 10751	– Business entertainment expenses
Section 10762	– General tariff requirements

*(Indiana Department of Transportation; 105 IAC 5-1-2; filed May 18, 1983, 2:18 p.m.: 6 IR 1200; filed Feb 27, 1985, 9:24 a.m.: 8 IR 767; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-2) to Indiana Department of Transportation (105 IAC 5-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 5-1-3 Railroad tariffs; filing notice

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 3. The notice period for filing railroad tariffs with the public service commission of Indiana which contain new or changed rates, classifications, rules practices or other provisions shall be as follows:

(a) The tariff shall be on file with this commission at least 30 days prior to its effective date for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service.

(b) The tariff shall be on file with this commission at least 10 days prior to its effective date for changes resulting in decreased rates or increased value of service, or changes resulting in neither increases nor reductions.

(c) The tariff shall be on file with this commission at least 45 days prior to its effective date for joint rate surcharges and cancellations filed pursuant to the provisions of 49 U.S.C. Sec. 10705a.

(d) A railroad or its publishing agent may file an application pursuant to IC 8-3-1-8, to depart from the provisions of 170 IAC 3-1.1 [this rule].

(e) Railroad contracts shall be filed with this commission pursuant to the provisions of 170 IAC 3-1.1-38 through 3-1.1-50.1 [sections 38 through 50 of this rule]. (*Indiana Department of Transportation; 105 IAC 5-1-3; filed May 18, 1983, 2:18 p.m.: 6 IR 1202; filed Feb 27, 1985, 9:24 a.m.: 8 IR 769; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-3) to Indiana Department of Transportation (105 IAC 5-1-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 5-1-4 Content of notice

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 4. Each rate publication filed with the commission shall be in the form prescribed by the commission and shall contain such information as the commission may require, including, but not limited to:

(1) A tariff containing all relevant and material provisions relating to the rate and its application. The tariff shall comply with the interstate commerce commission's rules for filing and construction of tariffs.

(2) A statement of the effect which the rate shall have on the carrier's gross revenue (increase, decrease, no change).

(*Indiana Department of Transportation; 105 IAC 5-1-4; filed May 18, 1983, 2:18 p.m.: 6 IR 1202; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-4) to Indiana Department of Transportation (105 IAC 5-1-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 5-1-5 Defect in notice; consequence

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 5. No rate shall be considered published under the provisions of the Staggers Act unless notice has been given in compliance with this section. However, if a tariff is filed and becomes effective, despite some defect, the rates, charges, fares, classifications, rules, etc., in that tariff are in effect and will be applied until cancelled or amended or until they are stricken from the files by the Indiana public service commission. (*Indiana Department of Transportation; 105 IAC 5-1-5; filed May 18, 1983, 2:18 p.m.: 6 IR 1202; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-5) to Indiana Department of Transportation (105 IAC 5-1-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 5-1-6 Commencement of proceedings

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 6. When a new individual or joint rate (except general rate increases, inflation-based increases, or fuel adjustment surcharges filed under the provisions of 49 U.S.C. Sec. 11501(b)(6) over which the public service commission of Indiana has no jurisdiction) or an individual or joint classification, rule, or practice related to a rate is filed with the public service commission of Indiana by a rail carrier the commission may:

(1) upon its own initiative, commence an investigation proceeding, or

(2) upon protest of an interested party commence an investigation proceeding, or

(3) upon protest of an interested party commence an investigation and suspension proceeding

to determine whether the proposed rate, classification, rule or practice is discriminatory, unreasonable, or in any other way violates applicable law.

Rates based on limited carrier liability may be published and filed with the commission, without prior approval, pursuant to 49 U.S.C. Sec. 10730. However, such rates will be subject to protest on grounds such as unreasonableness or nonconformance with the tariff publication requirements found in 49 CFR 1300.4(i)(11).

The commission shall give reasonable notice to interested parties before beginning a proceeding. However, the commission may begin the proceeding without allowing an interested party to file an answer. (*Indiana Department of Transportation; 105 IAC 5-1-6; filed May 18, 1983, 2:18 p.m.: 6 IR 1202; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-6) to Indiana Department of Transportation (105 IAC 5-1-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 5-1-7 Duration of suspension period

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 7. The commission shall complete a proceeding commenced under 170 IAC 3-1.1-6 [section 6 of this rule] within five months from the effective date of the proposed rate, classification, rule or practice except that if the commission reports to the interstate commerce commission that it cannot make a final decision within that time and explains the reason for the delay, it may then take an additional three months to complete the proceeding and make a final decision.

If the commission does not render a final decision within the applicable time period the rate, classification,

rule or practice shall become effective immediately or, if already in effect, shall remain in effect.

However, if a railroad makes a tariff filing to adjust an intrastate rate, rule or practice under 49 U.S.C. Sec. 11501(d) to that of similar traffic moving in interstate commerce, and the commission investigates or suspends such tariff filing, the carrier may apply to the interstate commerce commission to review the matter if the public service commission of Indiana has not acted with finality by the 120th day after the tariff was filed. If the carrier elects not to refer the matter to the interstate commerce commission the public service commission [sic., of] Indiana may decide the issue within five months, as provided for in this subsection. (*Indiana Department of Transportation; 105 IAC 5-1-7; filed May 18, 1983, 2:18 p.m.: 6 IR 1203; filed Feb 27, 1985, 9:24 a.m.: 8 IR 769; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-7) to Indiana Department of Transportation (105 IAC 5-1-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-8 Grounds for suspension

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 8. The commission may not suspend a proposed rate, classification, rule, or practice unless it appears from the specific facts shown by the verified statement of a person that:

- (1) it is substantially likely that the protestants will prevail on the merits;
- (2) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestants; and
- (3) because of the peculiar economic circumstances of the protestant, the provisions of 170 IAC 3-1.1-13 [section 13 of this rule] do not protect the protestant. (*Indiana Department of Transportation; 105 IAC 5-1-8; filed May 18, 1983, 2:18 p.m.: 6 IR 1203; filed Feb 27, 1985, 9:24 a.m.: 8 IR 769; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-8) to Indiana Department of Transportation (105 IAC 5-1-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-9 Market dominance

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 9. (a) When the new individual or joint rate is alleged to be unreasonably high, the commission, within 90 days after the start of a proceeding under this adminis-

trative rule, shall determine whether or not the railroad proposing the rate has market dominance over the transportation to which the rate applies.

(b) If the commission finds that:

(1) The railroad proposing the rate has market dominance over the transportation to which the rate applies, it shall then proceed to determine whether or not the proposed rate exceeds a maximum reasonable level for that transportation.

(2) The railroad proposing the rate does not have market dominance over the transportation to which the rate applies, it shall not make a determination on the issue of reasonableness.

(c) A finding by the commission that the proposed rate has a revenue-variable cost percentage which is equal to or greater than the percentages found in 49 U.S.C. Sec. 10709(d)(2) does not establish a presumption that:

(1) the railroad has or does not have market dominance over such transportation, or

(2) the proposed rate exceeds or does not exceed a reasonable maximum level.

(d) Evidentiary guidelines for the determination of whether or not the railroad has market dominance over the transportation to which the rate applies shall be found in 170 IAC 3-1.1-17 through 3-1.1-20 [sections 17 through 20 of this rule]. (*Indiana Department of Transportation; 105 IAC 5-1-9; filed May 18, 1983, 2:18 p.m.: 6 IR 1203; filed Feb 27, 1985, 9:24 a.m.: 8 IR 769; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-9) to Indiana Department of Transportation (105 IAC 5-1-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-10 Reasonableness of rate; evaluation

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 10. (a) Except for nonferrous recyclables, the commission shall evaluate the reasonableness of a rate only after market dominance has been established. In determining whether a rate is reasonable, the commission shall consider, among other factors, evidence of the following:

(1) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(3) the carrier's mix of rail traffic to determine whether the shippers of one commodity are paying an unreasonable share of the carrier's overall revenues.

(b) Pursuant to the interstate commerce commission's decision in Ex Parte 394, a rate on nonferrous recyclable material is presumed to be unreasonable when it is set at a revenue to variable cost ratio greater than that allowed by the Staggers Act as amended from time to time. (*Indiana Department of Transportation; 105 IAC 5-1-10; filed May 18, 1983, 2:18 p.m.: 6 IR 1203; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-10) to Indiana Department of Transportation (105 IAC 5-1-10) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-11 Burden of proof

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 11. (a) General—The burden shall be on the protestant to prove the matters described in 170 IAC 3-1.1-8 [section 8 of this rule].

(b) Market Dominance:

(1) Jurisdiction—The respondent railroad shall bear the burden of showing that the commission lacks jurisdiction to review the proposed rate because the rate produces a revenue-variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709(d)(2). The railroad may meet its burden of proof by showing the revenue-variable cost percentage for that transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10707(d)(2). The protestant may rebut the railroad's evidence with a showing that the revenue-variable cost percentage is equal to or greater than the threshold percentage in 49 U.S.C. Sec. 10709(d)(2).

(2) Intramodal and intermodal competition—The protestant shall bear the burden of demonstrating that there exists no effective intramodal or intermodal competition for the transportation to which the rate applied. Respondent railroad may rebut the protestant's showing with evidence that effective intramodal or intermodal competition exists.

(3) Product and geographic competition—If intramodal and intermodal competition is shown not to exist, the respondent railroad shall have the burden of proving that either product or geographic competition for the involved transportation does exist. The protestant shall then have the burden of proving that such competition is not effective.

(c) Reasonableness:

(1) Rate increases:

(A) Protestant's burden of proof—A party protesting a rate increase shall bear the burden of demonstrating its unreasonableness if such rate:

- (i) is authorized under 49 U.S.C. Sec. 10707a; and
- (ii) results in a revenue-variable cost percentage for

the transportation to which the rate applied that is less than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. Sec. 10707a(e)(2)(A).

(B) Respondent's burden of proof—The respondent railroad shall bear the burden of demonstrating the reasonableness of a rate increase if such rate:

(i) is greater than that authorized under 49 U.S.C. Sec. 10707a, or

(ii) results in a revenue-variable cost percentage for the transportation to which the rate applied that is equal to or greater than the lesser of the percentage described in clauses (i) and (ii) of the 49 U.S.C. Sec. 10707a(e)(2)(A); and

(iii) it is subjected to an investigation by the commission under 49 U.S.C. Sec. 10707.

(2) Rate decreases—A party protesting a rate decrease shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the railroad, and is therefore unreasonably low.

(*Indiana Department of Transportation; 105 IAC 5-1-11; filed May 18, 1983, 2:18 p.m.: 6 IR 1204; filed Feb 27, 1985, 9:24 a.m.: 8 IR 770; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-11) to Indiana Department of Transportation (105 IAC 5-1-11) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-12 Rate flexibility

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 12. (a) A rail carrier may raise any rate pursuant to the limitations described in 49 U.S.C. Sec. 10707a. Base rates increased by the quarterly rail cost adjustment factor will not be investigated or suspended. In addition, a railroad may increase any rate by 6% per annum (to a maximum of 18%) over the four year period following enactment of the Staggers Act. Thereafter, railroads not earning adequate revenues, as defined by the interstate commerce commission, may raise rates 4% per year. Neither the 6% or 4% increase shall be suspended. If the increase results in a revenue to variable cost ratio that equals or exceeds 190%, the commission may investigate the rate either on its own motion or on complaint of an interested party.

(b) In determining whether or not to investigate the rate this commission shall consider:

- (1) the amount of traffic which the railroad transports at revenues which do not contribute to going concern value and efforts made to minimize such traffic;
- (2) the amount of traffic which contributes only marginally to fixed costs and the extent to which rates on such traffic can be changed to maximize the revenues from such traffic;

- (3) the impact of the challenged rate on national energy goals;
- (4) state and national transportation policy; and
- (5) the revenue adequacy goals incorporated in the interstate commerce act.

(Indiana Department of Transportation; 105 IAC 5-1-12; filed May 18, 1983, 2:18 p.m.: 6 IR 1204; filed Feb 27, 1985, 9:24 a.m.: 8 IR 771; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-12) to Indiana Department of Transportation (105 IAC 5-1-12) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-13 Suspension actions; monetary adjustments

Authority: IC 8-1-1-3; IC 8-1-1-12  
Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 13. (a) Rate Increases With No Suspensions—In the event the commission does not suspend but investigates a proposed rate increase under 170 IAC 3-1.1-8 [section 8 of this rule], the commission shall require the rail carrier to account for all amounts received under the increase until the commission completes its proceedings under 170 IAC 3-1.1-7 [section 7 of this rule]. The accounting shall specify by whom and for whom the amounts are paid. When the commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date that the “Statement of Monetary Adjustment” is filed) of marketable securities of the United States government having a duration of 90 days.

(b) Rate Increases With Suspension—If a rate is suspended under 170 IAC 3-1.1-8 [section 8 of this rule] and any portion of such rate is later found to be reasonable the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date that the “Statement of Monetary Adjustment” is filed) of marketable securities of the United States government having a duration of 90 days.

(c) Rate Decreases With Suspension—In the event the commission suspends a proposed rate decrease under 170 IAC 3-1.1-8 [section 8 of this rule] which is later found to be reasonable, the rail carrier must refund any part of the decrease found to be reasonable if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such

shipper's traffic transported at such rate. (Indiana Department of Transportation; 105 IAC 5-1-13; filed May 18, 1983, 2:18 p.m.: 6 IR 1205; filed Feb 27, 1985, 9:24 a.m.: 8 IR 771; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-13) to Indiana Department of Transportation (105 IAC 5-1-13) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-14 Filing procedures

Authority: IC 8-1-1-3; IC 8-1-1-12  
Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 14. This section shall apply in connection with the filing of a protest against a proposed rail rate, classification, rule or practice and the reply thereto:

(1) Liberal construction. This section shall be liberally construed to secure just, speedy and inexpensive determination of the issues presented.

(2) Definitions. (A) “Proceeding”—An investigation by the commission into the propriety of a proposed rail rate.

(B) “Protestant”—A person opposed to any tariff or schedule becoming effective.

(C) “Respondent”—The railroad and/or their agent against whom the protest is filed or any other person designated by the commission to participate in the proceeding.

(D) “Party”—Shall include the “protestant” and “respondent” or others permitted or directed by the commission to participate in the proceeding.

(E) “Pleading”—A protest, reply to protest, a motion or any other written comment relating to the proceeding.

(F) “Person”—Shall include individuals as well as corporations, companies, associations, firms, partnerships, co-partnerships, societies, joint stock companies, or a trustee, receiver, assignee, or personal representative of another individual.

(3) Communications. (A) The protest, reply and any other pleadings relating to the proceeding will not be considered unless made in writing and filed with the commission.

(B) The protest, reply, “Statement of Monetary Adjustment” and other pleadings shall be addressed to:

Public Service Commission of Indiana  
Transportation Department  
901 State Office Building  
Indianapolis, Indiana 46204

(C) The protest, reply or other pleadings relating to the proceeding must be received for filing at the commission's office within the time limits, if any, for such filing. The date of receipt at the commission and not the date of deposit in the mail is determinative.

(D) If, after examination, the commission finds that the protest, reply, "Statement of Monetary Adjustment" or other pleadings relative to the proceeding are not in substantial compliance with the provisions of this section:

- (i) the commission may decline to accept the documents and may return them unfiled, or
- (ii) the commission may accept the documents for filing and advise the party tendering it of the deficiencies and require that they be corrected.

(4) Signature and verification. (A) The protest, reply or other pleadings relating to the proceeding shall be signed in ink and the signer's address shall be stated.

(B) The facts alleged in a protest, reply or other pleadings shall be verified by the person on whose behalf it is filed. If a protest, reply or other pleading is filed on behalf of a corporation or other organization, it shall be verified by an officer of such corporation or organization.

(5) Copies and service of documents. (A) Copies:

- (i) Protest—The original and two copies shall be filed with the commission and one copy shall be simultaneously served upon the publishing railroad or its publishing agent and upon other parties known by the protestant to be interested in the proceeding.
- (ii) Reply to protest—The original and two copies shall be filed with the commission and one copy shall be simultaneously served upon the protestant and upon the other parties named in the protest.
- (iii) Pleadings—The original and two copies shall be filed with the commission and one copy shall be simultaneously served upon all parties to the proceeding.

(B) Certificate of service—When a protest, reply or pleading is filed with the commission it shall include a certificate showing simultaneous service upon all parties to the proceeding.

Such service shall be made by delivery in person, or by first-class mail, certified mail, registered mail, or by express or equivalent parcel delivery service, properly addressed with charges prepaid, one copy to each party. Service upon the parties shall be by the same means of communication and class of service employed in making delivery to the commission. Provided, however, that when delivery is made to the commission in person, and it is not feasible to serve the other parties in person, service shall be made by first-class or express mail.

A certificate of service shall be in the following form:

I certify that I have this day served the foregoing document upon the following parties of record in this proceeding (here list the names and addresses of

parties served) by (here state the precise manner of making service).

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
(Signature)

(6) Content and timing. (A) Protest:

(i) Content:

(AA) Identification—The protested tariff should be identified by making reference to the name of the railroad or its publishing agent, to the public service commission of Indiana docket number, to the specific items or particular provisions protested and to the effective date of the protested publication. Reference should also be made to the tariff and specific provisions thereof that are proposed to be superseded.

(BB) Grounds for suspension—The protest shall incorporate sufficient facts to:

- (aa) meet the criteria for suspension as set forth in 170 IAC 3-1.1-8 [*section 8 of this rule*]; and
- (bb) to sustain the applicable burdens of proof as set forth in 170 IAC 3-1.1-11 [*section 11 of this rule*]. Further, the protest should include any additional information that would support suspension of the proposed rate.

(ii) Timing: A protest against and a request for suspension of a tariff filed by a railroad or its publishing agent shall be received by the commission at least:

- (AA) ten days prior to the effective date, when the proposed change is to become effective upon not less than 20 days notice;
- (BB) five days prior to the effective date, when the proposed change is to become effective upon not less than 10 days notice.

(B) Reply to protest:

(i) Content—The reply shall adequately identify the protested tariff. Further, it shall contain sufficient facts to rebut the allegations made in the protest and to sustain the applicable burdens of proof as set forth in 170 IAC 3-1.1-11 [*section 11 of this rule*].

(ii) Timing—A reply to a protest must be received by the commission not later than:

- (AA) the fourth working day prior to the effective date when the proposed change is to become effective upon not less than 20 days notice;
- (BB) the second working day prior to the effective date when the proposed change is to become effective upon not less than 10 days notice.

(C) Emergency protests and replies: In emergencies, telegraphic protests and replies are acceptable provided that the provisions of subsection (3) and (5)(A)—only the telegram and the original signed verified copy need

be filed with the commission—(6)(A) and (6)(B) are complied with. The telegrams shall include statements to the effect that they are copies of original protests or replies which have been signed, verified, and mailed to the commission. The telegrams shall also indicate the method of verification (e.g., by statements sworn to before a notary public). The telegrams shall also include a certification that copies either have been, or will be immediately, telegraphed to the proponent carriers or their publishing agents in the case of protests, or to the protestants in case of replies.

(D) Nonsuspension of investigation: Should a protestant desire to proceed further against a tariff which is not suspended or investigated or which has been suspended and the suspension vacated and the investigation discontinued, a separate later complaint should be filed.

*(Indiana Department of Transportation; 105 IAC 5-1-14; filed May 18, 1983, 2:18 p.m.: 6 IR 1205; filed Feb 27, 1985, 9:24 a.m.: 8 IR 771; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-14) to Indiana Department of Transportation (105 IAC 5-1-14) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 5-1-15 Refund or collection; determination of commission**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 15. (a) Refund or collection. Except as otherwise provided in paragraph (b), when the commission finds, pursuant to 170 IAC 3-1.1-13 [section 13 of this rule], that a railroad shall make refunds on freight charges collected or that the railroad is entitled to collect additional freight charges, but the amount cannot be ascertained upon the record before it, the party entitled to the refund or the railroad entitled to collect additional monies, as the case may be, shall immediately prepare a statement showing details of the shipments involved in the proceedings, in accordance with the Statement of Monetary Adjustment. The statement shall not include any shipment not covered by the commission's findings.

If the shipments moved over more than one route, a separate statement shall be prepared for each route and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes.

The party entitled to the refund shall submit its statement, together with the paid freight bills on the shipments, or true copies thereof, to the carrier which collected the charges, for verification and certification as to its accuracy.

If the railroads are entitled to additional monies, the carrier collecting the initial freight charges shall prepare the statement for and on behalf of the involved carriers.

All discrepancies, duplications, or other errors in the statements shall be adjusted by the parties and corrected agreed statements submitted to the commission.

The certificate shall be signed in ink by a general accounting officer of the carrier and shall cover all of the information shown in the statement.

If the carrier which collected the charges is not a respondent to the proceedings, its certificate shall be concurred in by like signature on behalf of a carrier named as a respondent in the proceeding.

Statements so prepared and certified shall be filed with the commission whereupon it shall consider entry of an order awarding refunds or collection of additional freight charges as the case may be.

(b) Petitions based on damages. Where 170 IAC 3-1.1 [this rule] provides for an award of damages for violations which involve tariff errors, tariff misconstruction, or the erroneous application of demurrage charges, and a carrier is willing to pay, or to waive collection of undercharges, petitions for appropriate authority should be filed by the carrier by submitting either a letter of intent to pay reparations, a letter of intent to pay reparation and waive undercharges, or a letter of intent to waive undercharges. Such petitions must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer admitting the matters stated in the petition. These petitions shall contain, as a minimum, the following information:

- (1) The name and addresses of the complainants seeking damages.
- (2) The names of the defendants against which the claim is filed.
- (3) The amount of the claim.
- (4) The tariff authority for both the assailed and the sought rate.
- (5) The dates on which, or within which, the shipments moved and when necessary to show compliance with the statute or [sic.] limitations, the dates when the shipments were delivered or tendered for delivery.
- (6) The points of origin and destination of the shipments and the routes of movements.
- (7) The commodity.
- (8) An admission by the carrier that the assailed rate was unreasonable, and a showing, where appropriate, that it has been removed from the tariff.
- (9) A statement certifying that all defendants against which the claim is lodged concur in the intent to pay reparations or waive undercharges.
- (10) Evidence to show compliance with the statute of limitations.

(11) A brief explanation of the circumstances causing the claim for damages and the precedent relied upon by the carrier in agreeing to honor it.

If a carrier is unable to file such petition within the statutory period and the claim is not already protected from the operation of the statute by informal complaint, a letter of registration setting forth the facts may be submitted by the carrier within the statutory period. This letter will also be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute. However, an appropriate letter of intent must be filed within one year following receipt by the commission of the letter of registration.

(c) Waiver of monies due to railroad:

(1) Communications—All communications shall be in writing and shall be addressed to:

Public Service Commission of Indiana  
Transportation Department  
901 State Office Building  
Indianapolis, Indiana 46204

(2) Freight charges in excess of \$2,000.

(A) Petition to waive collection of insignificant amounts—If a railroad wishes to waive collection of amounts due pursuant to 170 IAC 3-1.1-13(b) [section 13(b) of this rule], when such amounts are more than \$2,000, a petition for appropriate authority may be filed by the railroad, with the commission, in the form of a letter of intent to waive insignificant amounts. The petition should contain the following information:

(i) The names and address of the customer for whom the railroad wishes to waive collection.

(ii) The names and addresses of the railroads involved in the intended waiver and a statement certifying that all railroads concur in the action.

(iii) The amount intended to be waived.

(iv) The number of the investigation and suspension docket involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.

(v) The points of origin and destination of the shipments and the routes of movement, if relevant.

(vi) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.

(vii) When certification is necessary pursuant to (ii) above, it should be in the following format:

The (name of the petitioning railroad) hereby certifies that it holds the written concurrence of all of the railroads named in this petition.

By its (petitioner's title)

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
(petitioner's signature)

(B) Public notice—Petitions to waive collection of insignificant amounts will be available by the commission for public inspection on date of receipt, in the transportation department office.

(C) Contested petitions—Any interested person as defined in 170 IAC 3-1.1-14(2)(F) [section 14(2)(F) of this rule] may protest the waiver of monies due and such protest shall be filed with the commission within 30 days of the commission's receipt of the railroad's letter of intent to waive insignificant amounts. If the protest is not filed within the 30 day period, it will not be considered as being timely filed.

The protest shall be in the form of a letter of objection and shall identify the investigation and suspension docket number, shall clearly state the reasons for objection and shall certify according to 170 IAC 3-1.1-14(5)(B) [section 14(5)(B) of this rule] that a copy of the letter of objection has been served on all parties named in the letter of intent to waive insignificant amounts.

Replies to a letter of objection shall be filed no later than the 45th day after the commission's receipt of the letter of intent to waive insignificant amounts. If the reply to the protest is not filed within the 45 day period, it will not be considered as being timely filed.

If the letter of objection is timely filed, the commission will consider the letter of intent to waive insignificant amounts as being contested. The commission will notify all parties to the proceeding that the petition is contested and the railroad shall not be allowed to take any further action until the commission conducts a hearing on the matter, makes its findings and enters an appropriate order granting or denying the petition to waive monies due. Further, the filing of a letter of deposition with the commission will not be required.

(D) Uncontested petitions—A letter of intent to waive insignificant amounts which is not contested shall be considered an order of the commission authorizing the action contemplated in the petition 45 days after the commission's receipt of the petition.

Within 30 days after the expiration of the 45 day period, the railroad filing the petition shall file a letter of disposition informing the commission of the action taken, the date of the action and the amount of monies waived.

(3) Freight charges \$2,000 or less: If the amount to be waived is \$2,000 or less, no petition need be filed prior to waiver of monies due, provided that this exemption may be invoked by the railroad only once for any person as defined in 170 IAC 3-1.1-14(2)(F) [section 14(2)(F) of this rule] who uses the original rate during the suspension period.

However, a letter of disposition informing the commission of the investigation and suspension docket number, the

action taken, the date of the action and the amount of monies due that were waived shall be submitted to the commission within 30 days of the waiver.

(Indiana Department of Transportation; 105 IAC 5-1-15; filed May 18, 1983, 2:18 p.m.: 6 IR 1207; errata, 6 IR 1455; filed Feb 27, 1985, 9:24 a.m.: 8 IR 773; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-15) to Indiana Department of Transportation (105 IAC 5-1-15) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 5-1-16 Monetary adjustments**

Authority: IC 8-1-1-3; IC 8-1-1-12  
Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 16. The claim for seeking monetary adjustments shall be substantially in the following form:

Claim of \_\_\_\_\_ under decision of the public service commission of Indiana in Docket No. \_\_\_\_\_.

- \_\_\_\_\_ Date of shipment
- \_\_\_\_\_ Date of delivery or tender of delivery
- \_\_\_\_\_ Date charges were paid
- \_\_\_\_\_ Car initials
- \_\_\_\_\_ Car number
- \_\_\_\_\_ Origin
- \_\_\_\_\_ Destination
- \_\_\_\_\_ Route
- \_\_\_\_\_ Commodity
- \_\_\_\_\_ Weight
- \_\_\_\_\_ Rate
- \_\_\_\_\_ Amount
- \_\_\_\_\_ Rate
- \_\_\_\_\_ Amount
- \_\_\_\_\_ Refund (or monies due) on basis of commission's decision
- \_\_\_\_\_ Charges paid by (1)

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for refund (or monies due) previously filed with the commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions, and explanations thereof).

\_\_\_\_\_  
(Claimant)  
By: \_\_\_\_\_  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(Date)

Total amount of refund (or monies due) \$\_\_\_\_\_. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date \_\_\_\_\_ concurred (2) in: \_\_\_\_\_  
Company \_\_\_\_\_ Company. Defendant Collecting Carrier, Defendant (3) \_\_\_\_\_.

By \_\_\_\_\_, Auditor. By \_\_\_\_\_ Auditor.

(1) Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in other capacity.

(2) For concurring certificate in case the collection carrier is not a defendant.

(3) If not a defendant, strike out the word "defendant".  
(Indiana Department of Transportation; 105 IAC 5-1-16; filed May 18, 1983, 2:18 p.m.: 6 IR 1209; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-16) to Indiana Department of Transportation (105 IAC 5-1-16) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 5-1-17 Intramodal competition**

Authority: IC 8-1-1-3; IC 8-1-1-12  
Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 17. Intramodal competition refers to competition between two or more railroads transporting the same commodity between the same origin and destination. A shipper has rail alternatives when, for a given purpose, he can be served by more than one railroad or combination of different railroads. The degree to which these alternatives compete with one another depends on such factors as:

- (1) the number of rail alternatives;
- (2) the feasibility of each alternative as evidenced by:
  - (A) physical characteristics of the route associated with each alternative that are indicative of the feasibility of using that alternative for the traffic in question (e.g., circuitry, track conditions, etc.); and
  - (B) the direct access of both the shipper and the receiver to each of the rail alternatives as evidenced by individual rail sidings, neutral terminal companies or reciprocal switching; or if direct access is not available, then the feasibility of using local trucking to transport the commodity to or from terminals;
- (3) the transportation costs associated with each alternative (to determine if actual use of alternatives is due to excessive rates charged by the rail carrier in question);
- (4) collective ratemaking among the railroads in question as evidenced by rate bureau involvement; and
- (5) evidence of substantial rail-related investment or long-term supply contracts.

These factors should be considered in connection with the preparation and submission of evidence pertaining to the presence or absence of effective intramodal competition. This list is neither exhaustive nor mandatory but provides a general indication of the type of evidence that would be appropriate. (*Indiana Department of Transportation*; 105 IAC 5-1-17; filed May 18, 1983, 2:18 p.m.: 6 IR 1209; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-17) to Indiana Department of Transportation (105 IAC 5-1-17) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-18 Intermodal competition

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 18. Intermodal competition refers to competition between rail carriers and other modes for the transportation of a particular product between the same origin and destination. Motor and water carriage are the main sources of intermodal competition for railroads.

(a) Water carriage—Water carriage is restricted to certain geographic areas and is generally used for commodities moving in bulk. The evidence required to demonstrate effective competition between rail and water alternatives is in many respects similar to that required for intramodal competition among rail carriers. Parties in a rate case should provide evidence along the following lines:

- (1) the number of alternatives involving different carriers;
- (2) the feasibility of each alternative as evidenced by:
  - (A) pertinent physical characteristics, for the product in question, of the transportation or routing associated with each alternative;
  - (B) the access of both the shipper and receiver to each alternative; and
- (3) the transportation costs of each alternative.

Again, these factors are not exhaustive.

(b) Motor carriage—Unlike rail or water alternatives, the availability of many motor carrier alternatives for transportation services between two points can, in most instances, be taken for granted. Therefore, the feasibility of using motor carriage as an alternative to rail may be viewed as depending exclusively on the nature of the product and the needs of the shipper or receiver. Effective competition from motor carriage may be deduced from the following types of evidence:

- (1) the amount of the product in question that is transported by motor carrier where rail alternatives are available;
- (2) the amount of the product that is transported by

motor carrier under transportation circumstances (e.g., shipment size and distance) similar to rail;

- (3) physical characteristics of the product in question that may preclude transportation by motor carrier; and
- (4) the transportation costs of the rail and motor carrier alternatives.

Other types of evidence on the feasibility or nonfeasibility of motor carriage as an alternative to rail will also be considered. (*Indiana Department of Transportation*; 105 IAC 5-1-18; filed May 18, 1983, 2:18 p.m.: 6 IR 1209; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-18) to Indiana Department of Transportation (105 IAC 5-1-18) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-19 Geographic competition

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 19. Geographic competition may be described as a restraint on rail pricing stemming from a shipper's or receiver's ability to get the product to which the rate applies from another source, or ship it to another destination. If shippers and receivers can do this, the railroad must compete with the railroad serving the alternate source or destination. Geographic competition among rail carriers is nontrivial for commodities in which transportation costs account for a substantial portion of the delivered price. To establish the potential for geographic competition, evidence should be submitted concerning the following:

- (1) the number of alternative geographical sources of supply or alternative destinations available to the shipper or receiver for the product in question;
- (2) the number of these alternative sources or destinations served by different carriers; and
- (3) that the product available from each source or required by each destination is the same.

Such evidence is sufficient only to indicate whether effective geographic competition is possible. To determine whether effective geographic competition actually exists, evidence showing the feasibility of each source or destination and the likelihood of competition should be presented. This evidence may be as follows:

- (1) the distance associated with each alternative source or destination;
- (2) relevant physical characteristics of the route associated with each alternative;
- (3) the access of the shipper or receiver to each transportation alternative;
- (4) the capacity of each source to supply the product in question or the capacity of each destination to absorb the product in question;

(5) the transportation costs associated with each alternative;

(6) collective ratemaking among the railroads in question as evidenced by rate bureaus; and

(7) evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to October 1, 1980).

It is to be emphasized that these guidelines are not intended to encompass all pertinent evidence. (*Indiana Department of Transportation; 105 IAC 5-1-19; filed May 18, 1983, 2:18 p.m.: 6 IR 1210; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-19) to Indiana Department of Transportation (105 IAC 5-1-19) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-20 Product competition

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 20. Product competition occurs when a receiver or shipper can use a substitute(s) for the product covered by the rail rate. In that case, the railroad must compete with the railroad or other mode which carries that other product, and again, must keep its rate competitive if it wants the traffic. Evidence as to the existence of product competition should reflect the availability to the shipper or receiver of feasible substitutes and show that these substitutes can be obtained through the use of other carriers or modes without substantially greater cost, transportation or otherwise. To demonstrate whether a feasible substitute exists, the following types of evidence, among others, may be submitted:

(1) use of a substitute product(s) by the receiver or shipper in question or by others with similar needs and under similar conditions;

(2) the prices of the substitute product(s) relative to the product in question;

(3) the efficiency of the substitute product(s) relative to the product in question; and

(4) the explicit and implicit transportation costs of the substitute product(s) and the product in question.

The above factors are not intended to be exhaustive. (*Indiana Department of Transportation; 105 IAC 5-1-20; filed May 18, 1983, 2:18 p.m.: 6 IR 1210; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-20) to Indiana Department of Transportation (105 IAC 5-1-20) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-21 Formal complaints; general allegations

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 21. A formal complaint shall be so drawn as to fully and completely advise the parties defendant and the commission in what respects the provisions of the Act have been or are being violated or will be violated, and shall set forth briefly and in plain language the facts claimed to constitute such violations. If two or more sections or subsections of the Act or requirements established pursuant thereto are alleged to be violated, the facts claimed to constitute violation of one section, subsection, or requirement shall be stated separately from those claimed to constitute a violation of another section, subsection, or requirement whenever that can be done by reference or otherwise without undue repetition. (*Indiana Department of Transportation; 105 IAC 5-1-21; filed May 18, 1983, 2:18 p.m.: 6 IR 1211; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-21) to Indiana Department of Transportation (105 IAC 5-1-21) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-22 Formal complaints; damages sought

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 22. A formal complaint seeking damages, when permitted under the Act, shall be filed with the commission within the statutory period, and shall contain such data as will serve to identify with reasonable definiteness the shipments or transportation services in respect of which damages are sought. Such complaint shall state:

(1) that complainant makes claim for damages;

(2) the name of each individual seeking damages;

(3) the names of defendants against which claim is made;

(4) the commodities, the rate applied, the date when the charges were paid, by whom paid, and by whom borne;

(5) the period of time within which or the specific dates upon which the shipments were made, and the dates when they were delivered or tendered for delivery;

(6) the points of origin and destination, either specifically or, where they are numerous, by definite indication of a defined territorial or rate group of the points of origin and destination and, if known, the routes of movement; and

(7) the nature and amount of the injury sustained by each claimant.

If a complaint seeking the award of damages contains a claim on any shipment which has been the subject of a previous informal or formal complaint to the commission, reference to such complaint shall be given. (*Indiana Department of Transportation; 105 IAC 5-1-22; filed*

May 18, 1983, 2:18 p.m.: 6 IR 1211; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-22) to Indiana Department of Transportation (105 IAC 5-1-22) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-23 Formal complaints; general**

Authority: IC 8-1-1-3; IC 8-1-1-2  
Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 23. The original of each formal complaint, amended or supplemental formal complaint, or cross-complaint, shall be accompanied by copies in sufficient number to enable the commission to serve one upon each defendant, including each receiver or trustee, and retain two copies in addition to the original. (*Indiana Department of Transportation; 105 IAC 5-1-23; filed May 18, 1983, 2:18 p.m.: 6 IR 1211; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-23) to Indiana Department of Transportation (105 IAC 5-1-23) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-24 Formal complaints; tariff or schedule references**

Authority: IC 8-1-1-3; IC 8-1-1-2  
Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 24. The several rates, charges, schedules, classifications, regulations, or practices on which complaint is made shall be set out by specific reference to the tariffs or schedules in which they appear, whenever that is feasible. (*Indiana Department of Transportation; 105 IAC 5-1-24; filed May 18, 1983, 2:18 p.m.: 6 IR 1211; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-24) to Indiana Department of Transportation (105 IAC 5-1-24) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-25 Formal complaints; prayers for relief**

Authority: IC 8-1-1-3; IC 8-1-1-2  
Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 25. (a) Generally—A formal complaint in which relief for the future is sought should contain a detailed statement of the relief desired. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing.

(b) Specific prayer for damages—Except under unusual circumstances, and for good cause shown, damages will not be awarded upon a complaint unless specifically prayed for. (*Indiana Department of Transportation; 105*

*IAC 5-1-25; filed May 18, 1983, 2:18 p.m.: 6 IR 1211; filed Feb 27, 1985, 9:24 a.m.: 8 IR 775; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-25) to Indiana Department of Transportation (105 IAC 5-1-25) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-26 Formal complaints; amended and supplemental**

Authority: IC 8-1-1-3; IC 8-1-1-2  
Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 26. An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have occurred within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. (*Indiana Department of Transportation; 105 IAC 5-1-26; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-26) to Indiana Department of Transportation (105 IAC 5-1-26) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-27 Formal complaints; answers and cross complaints**

Authority: IC 8-1-1-3; IC 8-1-1-2  
Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 27. (a) Generally—An answer may simultaneously be responsive to a formal complaint and to any amendment or supplement thereof. It shall be drawn so as to fully and completely advise the parties and the commission of the nature of the defense and shall admit or deny specifically and in detail each material allegation of the pleading answered. An answer may include a detailed statement of any counterproposal which a defendant may desire to submit. Unless the issue is such that separate answers are required, answer for all defendants may be filed on their behalf by one defendant in one document, in which event the answer must show clearly the names of all defendants joining therein, and their concurrence.

(b) Cross complaints—A cross complaint may be filed against other parties to the proceeding alleged to have violated the Staggers Act. Such cross-complaint must be filed by a defendant with its answer.

(c) Time for filing copies—Unless otherwise directed by the commission, an answer to a complaint shall be filed within 20 days after the day on which the complaint was served. The original and two copies of an answer shall be filed with the commission.

(d) When issue joined—If any defendant answers or

fails to file and serve an answer within the period specified in paragraph (c) [subsection (c)], issue thereby is joined as to such defendant. (*Indiana Department of Transportation; 105 IAC 5-1-27; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-27) to Indiana Department of Transportation (105 IAC 5-1-27) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 5-1-28 Formal complaints; satisfaction**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 28. If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties shall be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible. (*Indiana Department of Transportation; 105 IAC 5-1-28; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-28) to Indiana Department of Transportation (105 IAC 5-1-28) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 5-1-29 Formal complaints; signature and verification**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 29. The complaint, answer and other pleadings relating to a complaint proceeding shall be signed in ink and the signer's address shall be stated.

The facts alleged in a complaint, answer or other pleadings shall be verified by the person on whose behalf it is filed. If a complaint, answer or other pleading is filed on behalf of a corporation or other organization, it shall be verified by an officer of such corporation or organization. (*Indiana Department of Transportation; 105 IAC 5-1-29; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-29) to Indiana Department of Transportation (105 IAC 5-1-29) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 5-1-30 Formal complaints; certificate of service**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 30. Proof of service of any paper shall be by

certificate of attorney, affidavit or acknowledgement. A certificate of service shall be in the following form:

I certify that I have this day served the foregoing document upon the following parties of record in this proceeding (here list the names and addresses of those served) by (here state the precise manner of making service).

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Signature)

(*Indiana Department of Transportation; 105 IAC 5-1-30; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-30) to Indiana Department of Transportation (105 IAC 5-1-30) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 5-1-31 Statements of claimed damages; commission findings**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 31. When the commission finds that damages are due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with 170 IAC 3-1.1-37 [section 37 of this rule].

The statement shall not include any shipment not covered by the commission's findings, or any shipment on which complaint was not filed with the commission within the statutory period.

The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint.

If the shipments moved over more than one route, a separate statement shall be prepared for each route, and separately numbered, except that shipments, as to which the collecting carrier is in each instance the same, may be listed in a single statement if grouped according to routes.

The statement, together with the paid freight bills on the shipments, or true copies thereof, shall then be forwarded to the carrier which collected the charges, for verification and certification as to its accuracy. All discrepancies, duplications, or other errors in the statements shall be adjusted by the parties and corrected agreed statements submitted to the commission.

The certificate shall be signed in ink by a general accounting officer of the carrier and shall cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case, its certificate shall be concurred in by like signature on behalf of a carrier defendant.

Statements so prepared and certified shall be filed with the commission whereupon it will consider entry of an order awarding damages. (*Indiana Department of Transportation; 105 IAC 5-1-31; filed May 18, 1983, 2:18 p.m.: 6 IR 1212; filed Feb 27, 1985, 9:24 a.m.: 8 IR 776; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-31) to Indiana Department of Transportation (105 IAC 5-1-31) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-32 Zone of rate flexibility

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 32. Base rates increased by the quarterly rail cost adjustment factor may not be found to exceed a reasonable maximum for the transportation involved. Complaints against rate increases effected under subsections (c) and (d) of 49 U.S.C. Sec. 10707(a) shall be considered pursuant to provisions of subsection (e) of said section. (*Indiana Department of Transportation; 105 IAC 5-1-32; filed May 18, 1983, 2:18 p.m.: 6 IR 1213; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-32) to Indiana Department of Transportation (105 IAC 5-1-32) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-33 Market dominance; rates established

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 33. The commission shall determine within 90 days of the start of a complaint proceeding whether the carrier has market dominance over the transportation to which the rate applies. If the commission finds that the carrier has market dominance, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. In making a determination of market dominance, the commission shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applied if the rail carrier proves that the rate charged results in a revenue-variable cost percentage which is less than that stated in 49 U.S.C. Sec. 10709(d)(2).

Evidentiary guidelines for the determination of whether or not the railroad shall market dominance over the transportation to which the rate applies shall be found in 170 IAC 3-1.1-17 through 3-1.1-20 [sections 17 through 20 of this rule].

If the commission determines that a rail carrier does not have market dominance over the transportation to

which a particular rate applies, the rate established by such carrier for such transportation shall be reasonable. (*Indiana Department of Transportation; 105 IAC 5-1-33; filed May 18, 1983, 2:18 p.m.: 6 IR 1213; filed Feb 27, 1985, 9:24 a.m.: 8 IR 776; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-33) to Indiana Department of Transportation (105 IAC 5-1-33) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-34 Rail rates; reasonable minimum

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 34. Rail rates shall not be established below a reasonable minimum. Any rate for transportation by a rail carrier that does not contribute to the going concern value for such carrier is presumed to be not reasonable.

Rail rates which equal or exceed the variable cost of providing the transportation are conclusively presumed to contribute to the going concern value of that rail carrier, and are therefore presumed to to [sic.] be above a reasonable minimum.

In determining whether a rate is reasonable, the commission shall consider the policy that railroads earn adequate revenues as well as evidence of the following:

- (1) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize [sic.] such traffic;
- (2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and
- (3) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

(*Indiana Department of Transportation; 105 IAC 5-1-34; filed May 18, 1983, 2:18 p.m.: 6 IR 1213; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-34) to Indiana Department of Transportation (105 IAC 5-1-34) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-1-35 Reasonableness of existing rates; burden of proof

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 35. (a) Jurisdiction—The defendant railroad shall bear the burden of showing that the commission lacks jurisdiction to review a rate because the rate produces a revenue-variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709(d)(2). The railroad shall meet its burden

of proof by showing the revenue-variable cost percentage for the transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10709(d)(2). A complainant may rebut the railroad's evidence with a showing that the revenue-variable cost percentage is equal to or greater than the threshold percentage cited in 49 U.S.C. Sec. 10709(d)(2).

(b) Reasonableness of existing rates:

(1) A party complaining that an existing rate is unreasonably high shall bear the burden of proving that such rate is not reasonable.

(2) A party complaining that an existing rate is unreasonably low shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the carrier, and is therefore unreasonably low.

(3) Savings provisions—Any interested party may file a complaint alleging that an intrastate railrood [sic.] rate which was in effect on the effective date of the Staggers Act (October 1, 1980) is subject to market dominance under the provisions of 49 U.S.C. Sec. 10709 and is not reasonable under the provisions of 49 U.S.C. Sec. 10701(a). Such complaint must have been filed with the public service commission of Indiana within 180 days of the effective date of the Staggers Act, i.e., by March 30, 1981.

Any rate which is not challenged in a complaint filed by March 30, 1981, or which is challenged in such a complaint but (A) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or (B) the rate is found to be reasonable, shall be deemed to be lawful and may not thereafter be challenged in the commission or in any court (excluding appeals from a decision of the commission).

These provisions shall not apply to any rate under which the volume of traffic transported during the twelve month period immediately preceding the effective date of the Staggers Act did not exceed 500 net tons and has increased tenfold within the three year period immediately preceding the bringing of a challenge to the reasonableness of such rate.

The complainant shall bear the burden of proving that a rate in effect on October 1, 1980, as described in this section, is unreasonable.

*(Indiana Department of Transportation; 105 IAC 5-1-35; filed May 18, 1983, 2:18 p.m.: 6 IR 1214; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-35) to Indiana Department of Transportation (105 IAC 5-1-35) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 5-1-36 Rate adjustments; non-applicability**

**Authority:** IC 8-1-1-3; IC 8-1-1-12  
**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 36. Complaints shall not be entertained by the commission to the extent that they challenge the reasonableness of the following rate adjustments:

- (1) general rate increases;
- (2) inflation-based rate increases; or
- (3) fuel adjustment surcharges.

*(Indiana Department of Transportation; 105 IAC 5-1-36; filed May 18, 1983, 2:18 p.m.: 6 IR 1214; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-1-36) to Indiana Department of Transportation (105 IAC 5-1-36) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 5-1-37 Reparation statement**

**Authority:** IC 8-1-1-3; IC 8-1-1-12  
**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 37. Claims for reparations shall be substantially in the following form:

Claims of \_\_\_\_\_ under decision of the public service commission of Indiana in Docket No. \_\_\_\_\_.

- \_\_\_\_\_ Date of shipment
- \_\_\_\_\_ Date of delivery or tender of delivery
- \_\_\_\_\_ Date charges were paid
- \_\_\_\_\_ Car initials
- \_\_\_\_\_ Car number
- \_\_\_\_\_ Origin
- \_\_\_\_\_ Destination
- \_\_\_\_\_ Route
- \_\_\_\_\_ Commodity
- \_\_\_\_\_ Weight
- \_\_\_\_\_ Rate
- \_\_\_\_\_ Amount
- \_\_\_\_\_ Rate
- \_\_\_\_\_ Amount
- \_\_\_\_\_ Reparation on basis of commission's decision
- \_\_\_\_\_ Charges paid by (1)

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions, and explanations thereof).

\_\_\_\_\_  
(Claimant)

By: \_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Date)

Total amount of reparation \$\_\_\_\_\_. The undersigned hereby certifies that this statement has been checked

against the records of this company and found correct.

Date \_\_\_\_\_ concurred (2) in: \_\_\_\_\_ Company \_\_\_\_\_ Company. Defendant Collecting Carrier, Defendant (3)\_\_\_\_\_.

By \_\_\_\_\_, Auditor. By \_\_\_\_\_ Auditor.

(1) Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in other capacity.

(2) For concurring certificate in case the collection carrier is not a defendant.

(3) If not a defendant, strike out the word "defendant". (*Indiana Department of Transportation; 105 IAC 5-1-37; filed May 18, 1983, 2:18 p.m.: 6 IR 1214; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-37) to Indiana Department of Transportation (105 IAC 5-1-37) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 5-1-38 Rail carrier contracts

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 38. (a) A contract subject [*sic.*] to this section is a written agreement, including any amendment, entered into by one or more rail carriers with one or more purchasers of rail services, to provide specified services under specified rates and conditions.

(b) A contract filed under this section shall:

(1) specify that the contract is made pursuant to 49 U.S.C. Sec. 10713. and;

(2) be signed by duly authorized parties.

(c) The term "amendment" includes written modifications signed by the parties.

(d) An amendment is treated as a new contract. An amendment is lawful only if it is filed and approved in the same manner as a contract. To the extent terms affecting the lawfulness of the underlying contract are changed, remedies are revived and review is again available. (*Indiana Department of Transportation; 105 IAC 5-1-38; filed May 18, 1983, 2:18 p.m.: 6 IR 1215; errata, 6 IR 1455; filed Feb 27, 1985, 9:24 a.m.: 8 IR 776; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-38) to Indiana Department of Transportation (105 IAC 5-1-38) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 5-1-39 Contract implementation date

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-3; IC 8-3-1-8

Sec. 39. Transportation or service performed under a

contract or amendment may begin, without specific commission authorization on or after the date the contract and contract summary or contract amendment and supplement are filed and before commission approval [*sic.*] as defined at 170 IAC 3-1.1-40.1(F) [*section 40(f) of this rule*], subject to the following conditions:

(a) The contract or contract amendment shall specifically state that the transportation or service may begin on the date of filing and that performance is subject to the conditions of this section. The contract summary or supplement shall separately reflect the date of commencement of service under this provision under 170 IAC 3-1.1-47.1(a)(4) [*section 48(a)(4) of this rule*], "duration of the contract".

(b) If the rail equipment standards of 49 U.S.C. Sec. 10713(k) are exceeded, prior relief shall be obtained from the commission and shall be specifically identified in the contract summary.

(c) If the commission disapproves or rejects the contract or amendment, the appropriate noncontract tariffs or the contract provisions otherwise in effect under previously approved contracts and amendments will be applicable.

(d) Before commission approval, the contract or amendment and transportation are subject to commission jurisdiction, 49 U.S.C. Sec. 10713, and applicable regulations.

(e) Transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively. (*Indiana Department of Transportation; 105 IAC 5-1-39; filed Feb 27, 1985, 9:24 a.m.: 8 IR 777; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-39) to Indiana Department of Transportation (105 IAC 5-1-39) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 5-1-40 Contracts; filing; complaints; review

Authority: IC 8-1-1-3; IC 8-1-1-12

Affected: IC 8-3-1-1

Sec. 40. (a) Rail carriers providing transportation subject to the jurisdiction of the public service commission of Indiana shall file with the commission an original and one copy of the contract entered into with one or more purchasers of rail service. The contract shall be accompanied by three copies of a summary of the nonconfidential elements of the contract in the format specified in 170 IAC 3-1.1-44.1 through 170 IAC 3-1.1-49.1 [*sections 44 through 49 of this rule*]. A contract and contract summary (and amendments and supplements)

may be rejected for noncompliance with applicable statutes and regulations.

(b) Grounds for review of contract. Within 30 days of the filing date of a contract, the commission may, on its own motion or on complaint, begin a proceeding to review it. Review can be based only on allegation of violations as described in (c) below [subsection (c)].

(c) Grounds for complaints. A contract may be reviewed by the commission on its own motion, or upon complaint, only on the following grounds:

(1) In the case of a contract other than a contract for the transportation of agricultural commodities (including forest products and paper), a complaint may be filed:

(A) by a shipper only on the grounds that the shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet common carrier obligations under IC 8-3-1-1, or

(B) by a port only on the grounds that the port individually will be harmed because the proposed contract will result in unreasonable discrimination against that port.

(2) In the case of a contract for the transportation of agricultural commodities (including forest products and paper), in addition to the grounds for a complaint described in subdivision (c)(1) [subdivision (1)], a complaint may be filed by a shipper on the grounds that the shipper individually will be harmed because:

(A) the rail carrier(s) unreasonably discriminated by refusing to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue and the shipper was ready, willing and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract was offered; or

(B) the proposed contract constitutes a destructive competitive practice.

(3) "Unreasonable discrimination," as used in 170 IAC 3-1.1 [this rule], means, when applied to agricultural shippers, that the railroad has refused to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into such contract at a time essentially contemporaneous with the period during which the contract at issue was offered, and when applied to a port, has the same meaning as the term under 49 U.S.C. Sec. 10741.

(4) The definition of "agricultural commodities," "forest products," and "paper" will be decided on a case-by-case basis.

(d) Filing and service of complaints [sic]. (1) A complaint shall be filed with the Public Service Commission of Indiana, Transportation Department, 901 State Officer Building, Indianapolis, Indiana, by the 18th day after the filing of the contract.

(2) A reply shall be filed by the 23rd day after the filing of the contract.

(3) An original and seven copies of each complaint shall be filed with the commission.

(4) A copy of the complaint shall be served on each railroad participating in the contract and replies shall be served on complainant. Complaints shall be served by hand, express mail or other overnight delivery service.

(5) An appeal of a commission decision will be made in accordance with 170 IAC 1-1-1 through 170 IAC 1-1-22, subject to the following exception:

An appeal must be made at least two work days prior to the contract approval date as set out in (f) [subsection (f)].

(e) Commission decision upon review of contract. Within 30 days after the date a proceeding is commenced to review a contract upon the grounds specified in (c) [subsection (c)], the commission shall decide whether the contract violates the provisions of 49 U.S.C. Sec. 10713. If the commission finds that the contract violates the provision of 49 U.S.C. Sec. 10713, it will:

(1) disapprove the contract; or

(2) in the case of agricultural contracts where the commission finds unreasonable discrimination by a carrier in accordance with subdivision (c)(3) [subsection (c)(3)], allow the carriers the option to:

(A) provide rates and services substantially similar to the contract is [sic.] issue, with such differences in terms and conditions as are justified by the evidence; or

(B) cancel the contract.

(f) Approval date of contract. (1) If the commission does not institute a proceeding to review the contract, it shall be approved on the 30th day after the filing of the contract. The contract shall be considered "expressly approved" by the commission.

(2) If the commission institutes a proceeding to review a contract, the contract is approved:

(A) on the date the commission approves the contract, if the date of approval is 30 or more days after the filing date of the contract;

(B) on the 30th day after the filing date of the contract if the commission denies the complaint against the contract prior to the 30th day after the filing date of the contract; or

(C) on the 60th day after the filing date of a contract, if the commission fails to disapprove the contract.

(g) Limitations of rights of a rail carrier to enter into future contracts. The commission may limit the right of a rail carrier to enter into future contracts if the commission determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligation under IC 8-3-1-1. The commission will handle these determinations on a case-by-case basis and may investigate either on its own initiative or upon the filing of a verified complaint by a shipper which demonstrates that it individually had been or will be harmed by a carrier's inability to fulfill its common carrier obligations as a result of existing contracts. (*Indiana Department of Transportation; 105 IAC 5-1-40; filed Feb 27, 1985, 9:24 a.m.: 8 IR 777; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-40) to Indiana Department of Transportation (105 IAC 5-1-40) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-41 Common carrier responsibilities**

**Authority:** IC 8-1-1-3; IC 8-1-1-12  
**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 41. (a) The terms of a contract approved by the commission determine completely the duties and service obligations of the parties to the contract with respect of the services provided under the contract. The contract does not effect the parties' responsibilities for any services which are not included in the contract.

(b) Service under a contract approved by the commission is deemed a separate and distinct class of service and the equipment used to fulfill the contract shall not be subject to car service decisions under 49 U.S.C. Sec. 11123. (*Indiana Department of Transportation; 105 IAC 5-1-41; filed Feb 27, 1985, 9:24 a.m.: 8 IR 778; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-41) to Indiana Department of Transportation (105 IAC 5-1-41) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-42 Contract enforcement**

**Authority:** IC 8-1-1-3; IC 8-1-1-12  
**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 42. (a) The exclusive remedy for an alleged breach of a contract approved by the commission shall be an action in an appropriate state court or United States District Court, unless the parties otherwise agree in the contract.

(b) The commission may not require a rail carrier to violate the terms of a contract that has been approved under 170 IAC 3-1.1-40.1(f) [section 40(f) of this rule],

except to the extent necessary to comply with 49 U.S.C. Sec. 11128. (*Indiana Department of Transportation; 105 IAC 5-1-42; filed Feb 27, 1985, 9:24 a.m.: 8 IR 779; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-42) to Indiana Department of Transportation (105 IAC 5-1-42) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-43 Agricultural commodities contracts**

**Authority:** IC 8-1-1-3; IC 8-1-1-12  
**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 43. (a) A rail carrier may enter into contracts for the transportation of agricultural commodities (including forest products but not including woodpulp, woodchips, pulpwood or paper) that involve the use of carrier owned or leased equipment not in excess of 40 percent of the total number of the carrier's owned or leased equipment, by major car type, except as provided in (b) [subsection (b)].

(b) In the case of a proposed contract between a Class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior three year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment used on the average during the prior three year period may be used for the contract without prior authorization by the commission.

(c) The commission may grant relief from the limitations of (a) and (b) [subsections (a) through (b)] if:

(1) a rail carrier or other party requests such relief; or the commission on its own initiative considers granting such relief; and

(2) the commission determines that making additional equipment available does not impair the rail carrier's ability to meet its common carrier obligations under 49 U.S.C. Sec. 11101.

(*Indiana Department of Transportation; 105 IAC 5-1-43; filed Feb 27, 1985, 9:24 a.m.: 8 IR 779; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-43) to Indiana Department of Transportation (105 IAC 5-1-43) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-44 Form of contracts**

**Authority:** IC 8-1-1-3; IC 8-1-1-12  
**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 44. (a) 170 IAC 3-1.1-44.1 through 170 IAC 3-1.1-50.1 [this section and sections 45 through 50 of this rule] govern the filing of contracts for railroad transportation services entered into by one or more rail carriers with one or more purchasers of rail service.

(b) Contracts for railroad transportation services and contract summaries shall be filed with the commission in accordance with the special tariff rules for contracts prescribed in these sections.

(c) All contracts and amendments shall be of a size not less than 8 by 10½ inches nor greater than 8½ by 14 inches; all contract summaries and supplements shall be a size not less than 8 by 10½ inches nor greater than 8½ by 11 inches, any amendment to a contract shall be the same size as the contract and any supplement to a summary shall be the same size as the summary, all shall be clear, legible, and on durable paper. (*Indiana Department of Transportation; 105 IAC 5-1-44; filed Feb 27, 1985, 9:24 a.m.: 8 IR 779; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-44) to Indiana Department of Transportation (105 IAC 5-1-44) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-45 Filing of contract and summary; availability**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 45. (a) A railroad or railroads entering into a contract for transportation services with one or more purchasers of rail service shall file with the commission the original and one copy of the contract and two copies of the contract summary with the Public Service Commission, Transportation Department, 901 State Office Building, Indianapolis, Indiana 46204.

(1) Contracts and contract summaries shall not be filed in the same packages with standard tariff filings.

(2) The confidential contract shall not be attached to the contract summary.

(3) The envelope or wrapper containing the contract and summary shall be marked "confidential, rail contract."

(4) A contract and summary shall be accompanied by a transmittal letter identifying the submitted documents, and the name and telephone number of a contact person.

(b)(1) The contract filed under 170 IAC 3-1.1-40.1 [section 40 of this rule] will not be available, for inspection by persons other than the parties to the contract and authorized commission personnel, except by petition demonstrating a likelihood of succeeding on the merits of the complaint and that the matter complained of could not be proven without access to additional contract information. The commission's action in the [sic.] any contract disclosure matter including a petition filed under 170 IAC 3-1.1-40.1 [section 40 of this rule] is subject to the limitations imposed by 5 U.S.C. Sec. 552(b) and the Trade Secrets Act, 18 U.S.C. 1905.

(2) A contract and its summary filed under 49 U.S.C. Sec. 10713, may be labeled "nonconfidential" by the parties. Such a designation will permit the general public to inspect the entire contract.

(c) The contract summary filed under this section shall include the information specified in 170 IAC 3-1.1-47.1 [section 47 of this rule]. The contract summary shall be made available for inspection by the general public.

(d) The contract summary filed under this section shall not be required to be posted in any stations, but shall be made available from carriers participating in the contract upon reasonable request. (*Indiana Department of Transportation; 105 IAC 5-1-45; filed Feb 27, 1985, 9:24 a.m.: 8 IR 779; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-45) to Indiana Department of Transportation (105 IAC 5-1-45) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-46 Contract title page**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 46. (a) The title page of every contract and amendment shall contain only the following information:

(1) In the upper right corner, the contract number (see 170 IAC 3-1.1-47.1 [section 47 of this rule]).

(2) In the center of the page, the issuing carrier's name, followed by the word "CONTRACT" in large print.

(3) Amendments to contracts shall also show, in the upper right corner, the amendment number (see 170 IAC 3-1.1-47.1 [section 47 of this rule]).

(4) A solid one inch black border down the right side of the title page.

(5) Date of issue and date to be effective.

(b) The title page of every contract summary and supplement shall contain only the following information:

(1) In the upper right corner, the contract summary number (see 170 IAC 3-1.1-47.1 [section 47 of this rule]).

(2) In the center of the page, the issuing carrier's name, followed by the words "CONTRACT SUMMARY" in large print.

(3) Date of issue and date to be effective.

(4) In the center lower portion, the issuing individual's name and address.

(5) Supplements to contract summaries shall also show, in the upper right corner, the supplement number (see 170 IAC 3-1.1-47.1 [section 47 of this rule]). (*Indiana Department of Transportation; 105 IAC 5-1-46; filed Feb 27, 1985, 9:24 a.m.: 8 IR 780; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-46) to

*Indiana Department of Transportation (105 IAC 5-1-46) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 5-1-47 Contract numbering system**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 47. (a) Each issuing carrier shall sequentially number the contract and contract summary it issues. The contract and contract summary identification number shall include the word "PSCI", the industry standard alphabet code for the issuing railroad (limited to four letters), the letter "C," and the sequential number, with each separated by a hyphen. The following example: the 357th contract filed by Milwaukee Road would have the following tariff identification number: "PSCI-MILW-C-0357."

(b) Any amendment to a contract shall be reflected in a corresponding supplement to the contract summary. If the change in the contract is only a confidential matter, a statement to that effect will be made in the supplement.

(c) At the carrier's option, the carrier's tariff publishing officers may reserve blocks of numbers if tariffs are issued from different departments. An index to the blocks of reserved numbers shall be filed with the commission.

(d) Contract amendments and contract summary supplements shall be sequentially numbered. (*Indiana Department of Transportation; 105 IAC 5-1-47; filed Feb 27, 1985, 9:24 a.m.: 8 IR 780; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Transportation (100 IAC 6-1-47) to Indiana Department of Transportation (105 IAC 5-1-47) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 5-1-48 Contract summary contents**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 48. (a) Contract summaries for agricultural commodities, forest products or paper shall contain the following terms in the order named:

(1) Name(s) of the participating carrier(s). A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus their addresses for service of complaints.

(2) The commodity or commodities to be transported under the contract.

(3) The origin station(s) and destination station(s), including the specific port(s) (if applicable).

(4) The duration of the contract.

(5) Rail car data by number of dedicated cars, or, at the carrier's option, car days:

(A) By major type used to fulfill the contract or contract options:

(i) available and owned by the carriers listed in (a)(1) [*subdivision (1)*], with average number of bad-order cars identified;

(ii) available and leased by the carriers listed in (a)(1) above [*subdivision (1)*], and average number of bad-order cars identified;

(iii) (optional) on order (for ownership or lease) along with delivery dates; and

(iv) in the event a complaint is filed involving common carrier obligation and carrier furnished cars, the carrier(s) shall immediately submit to the commission and the complainant additional data on cars used to fulfill the challenged contract. Data shall include (by major car type used to fulfill the contract):

(AA) total bad car orders;

(BB) assigned car obligations; and

(CC) free running cars.

(B) In addition to (5)(A)(i) [*clause (A)(i)*] if agricultural commodities (including forest products and paper, but not including woodpulp, wood chips, pulpwood or paper), a certified statement by the participating rail carrier/carriers:

(i) that the cumulative equipment total of all contracts does not exceed 40 percent of the capacity of the rail carrier's owned and leased cars by applicable major car type; and

(ii) in the cases of an agricultural shipper which originated an average 1,000 cars or more per year during the prior three year period by major car type, that the equipment used does not exceed 40 percent of the rail carrier's owned or leased cars used on the average by that shipper during the previous three years.

(C) Rail car data need not be submitted if:

(i) the shipper furnishes the rail cars, unless the cars are leased from the carrier; or

(ii) the contract is restricted to certain services which do not entail car supply.

(6) Rates and charges. Identification of base rates or charges and movement type (e.g., single car, multiple car, unit train), the minimum annual volume, and a summary of escalation provisions.

(7) Special features. Identification of existence (but not the terms of amount) of special features such transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discount, etc.

(b) Contract summaries for other commodities or services not involving a port shall contain the information required in (a)(1), (2), (4), and (5) [*subsection (a)(1) through (a)(2) and (a)(4) through (a)(5)*]. Subdivision (a)(7) [*subsection (a)(7)*], "special features", shall be

applicable to the extent that service requirements are placed in the contract.

(c) Contract summaries for other commodities or services involving a port shall contain the information required in (a)(2), (4), (5), (6), and (7) [subsection (a)(2) and (a)(4) through (a)(7)]. In addition, the port shall be named and the tariff mileage (rounded to the nearest 50 miles) shall be disclosed (or at the contracting parties' option, the origin and destination shall be specified). The required information shall be disclosed for each movement involving multiple origins/destinations.

(d) Format. The contract summary and supplements shall enumerate and have each item completed. Where the item does not pertain to the contract or amendment, the term "Not Applicable" ("NA") shall be used. (*Indiana Department of Transportation; 105 IAC 5-1-48; filed Feb 27, 1985, 9:24 a.m.: 8 IR 781; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-48) to Indiana Department of Transportation (105 IAC 5-1-48) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-49 Contract summary availability**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 49. Copies of contract summaries shall be available from the transportation department of the public service commission. Copies of contract summaries shall also be available from carriers participating in the contract. (*Indiana Department of Transportation; 105 IAC 5-1-49; filed Feb 27, 1985, 9:24 a.m.: 8 IR 781; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-49) to Indiana Department of Transportation (105 IAC 5-1-49) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-50 Notice of filing**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 50. All filed contracts (and amendments) and contract summaries (and supplements) shall provide 30 days notice to the public as required by 49 U.S.C. Sec. 10713(c). (*Indiana Department of Transportation; 105 IAC 5-1-50; filed Feb 27, 1985, 9:24 a.m.: 8 IR 782; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-50) to Indiana Department of Transportation (105 IAC 5-1-50) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-1-51 Exemption proceedings**

**Authority:** IC 8-1-1-3; IC 8-1-1-12

**Affected:** IC 8-3-1-3; IC 8-3-1-8

Sec. 51. Following an exemption decision by the interstate commerce commission, the public service commission of Indiana will automatically, without further order adopt the decision of the commission. (*Indiana Department of Transportation; 105 IAC 5-1-51; filed May 18, 1983, 2:18 p.m.: 6 IR 1219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-1-51) to Indiana Department of Transportation (105 IAC 5-1-51) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **Rule 2. Abandonment of Railway Stations; Establishment of Interlocking Systems**

105 IAC 5-2-1	Discontinuance of intrastate passenger train service
105 IAC 5-2-2	Interlocking defined
105 IAC 5-2-3	Application for approval of interlocking devices
105 IAC 5-2-4	Order of approval of interlocking devices
105 IAC 5-2-5	Installation, inspection, maintenance and repair of devices; applicable federal standards
105 IAC 5-2-6	Notice of completion
105 IAC 5-2-7	Full stop not required
105 IAC 5-2-8	Operation and maintenance removal
105 IAC 5-2-9	Discontinuance of service; notice
105 IAC 5-2-10	Inspection of devices

#### **105 IAC 5-2-1 Discontinuance of intrastate passenger train service**

**Authority:** IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

**Affected:** IC 8-1-1-8; IC 8-4-12-1; IC 8-4-13-1

Sec. 1. Before any railroad company engaged in intrastate commerce in the State of Indiana shall discontinue any passenger train, or trains, rendering intrastate service, such railroad company shall file its petition with the Commission requesting authority so to do. In such petition such company shall set out in detail the number and schedule of such train, or trains, the name of the cities and towns served in the State of Indiana, whether such trains transport mail, express, baggage and freight in addition to passengers, total amount of revenue received from the operation of such trains operating within the State of Indiana and the cost of such train operation for the previous calendar year, and such other facts as may be necessary to fully advise the Commission as to such passenger train service. Petitions filed under Rule 1 or 2 above set out will be docketed by the Commission and set for public hearings, and at least ten days notice thereof will be given by publication as required by law. (*Indiana Department of Transportation; 105 IAC 5-2-1; No. 17688: Abandonment of Railway Stations Rule*

2; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1760; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-2-1) to Indiana Department of Transportation (105 IAC 5-2-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-2-2 Interlocking defined

Authority: IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 2. The term "interlocking" shall be defined as including manually or automatically controlled interlocking at railroad crossings, at grade or draw-bridges as provided by Federal Signal Act of 1937, and as it may be amended and the orders of the Interstate Commerce Commission made thereunder. (*Indiana Department of Transportation; 105 IAC 5-2-2; No. 17688: Abandonment of Railway Stations Rule 3; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1761; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-2) to Indiana Department of Transportation (105 IAC 5-2-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-2-3 Application for approval of interlocking devices

Authority: IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 3. Any railroad submitting application specifications and blueprints to the Interstate Commerce Commission seeking approval of any interlocking plant matters requiring Interstate Commerce Commission approval, shall concurrently submit to this Commission a copy of such information for study and record. (*Indiana Department of Transportation; 105 IAC 5-2-3; No. 17688: Abandonment of Railway Stations Rule 4; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1761; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-3) to Indiana Department of Transportation (105 IAC 5-2-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-2-4 Order of approval of interlocking devices

Authority: IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 4. If and when the Interstate Commerce Commission renders an order on an application as set out in rule 4 [section 3 of this rule], a copy of same shall be submitted to this Commission as a matter of record. (*Indiana*

*Department of Transportation; 105 IAC 5-2-4; No. 17688: Abandonment of Railway Stations Rule 5; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1761; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-4) to Indiana Department of Transportation (105 IAC 5-2-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-2-5 Installation, inspection, maintenance and repair of devices; applicable federal standards

Authority: IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 5. Rules, standards and instructions for installation, inspection and maintenance and repair of interlocking as promulgated and established by the Interstate Commerce Commission in accordance with paragraph C, Section 26, of the Interstate Commerce Commission Act, as amended August 26, 1937, and effective September 1, 1939, commonly known as the Signal Inspection Act, shall govern interlocking within the State of Indiana.

Such rules hereby adopted by reference are set out in an Interstate Commerce Commission pamphlet now on file in the office of the Secretary and the office of the Railroad Inspector's Department of the Public Service Commission of Indiana and are entitled:

"Rules, Standards, and Instructions for installation, inspection, maintenance, and repair of Automatic Block Signal Systems, interlocking centralized traffic control systems, automatic train stop and train control systems, automatic cab signal systems continuously controlled (without automatic train stop or train control), dragging equipment and slide detectors and other similar protective devices, other similar appliances, methods, and systems." (*Indiana Department of Transportation; 105 IAC 5-2-5; No. 17688: Abandonment of Railway Stations Rule 6; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1761; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-5) to Indiana Department of Transportation (105 IAC 5-2-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-2-6 Notice of completion

Authority: IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 6. This Commission shall be notified in writing when interlocking changes approved by the Interstate Commerce Commission shall have been completed and placed in service so that this Commission may at its

convenience make such inspections as it deems necessary. (*Indiana Department of Transportation; 105 IAC 5-2-6; No. 17688: Abandonment of Railway Stations Rule 7; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-6) to Indiana Department of Transportation (105 IAC 5-2-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-2-7 Full stop not required

Authority: IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 7. When the interlocking has been constructed and is maintained in compliance with Rule 6 [section 5 of this rule] of this order then and in that case, it is lawful for the engines and trains of such railroad, or railroads, to pass over such crossings and drawbridges without first coming to a full stop as prescribed by the Indiana statutes. (*Indiana Department of Transportation; 105 IAC 5-2-7; No. 17688: Abandonment of Railway Stations Rule 8; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-7) to Indiana Department of Transportation (105 IAC 5-2-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-2-8 Operation and maintenance removal

Authority: IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 8. Railroad employees whose duties require it shall be furnished with a copy of the railroad company's rules and regulations for the guidance of employees in the operation and maintenance of interlocking; such rules shall include the use of hand signals when fixed signals become inoperative. (*Indiana Department of Transportation; 105 IAC 5-2-8; No. 17688: Abandonment of Railway Stations Rule 9; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-8) to Indiana Department of Transportation (105 IAC 5-2-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-2-9 Discontinuance of service; notice

Authority: IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 9. When an interlocking is taken out of service train and engine movements through the plant must be

made in accordance with precautions prescribed by statutes governing train movements over and across non-interlocking railroad grade crossings and drawbridges, and this Commission so notified of the change in operation when such change is in excess of a period of 48 hours. (*Indiana Department of Transportation; 105 IAC 5-2-9; No. 17688: Abandonment of Railway Stations Rule 10; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-9) to Indiana Department of Transportation (105 IAC 5-2-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-2-10 Inspection of devices

Authority: IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1-1

Affected: IC 8-3-1-1

Sec. 10. The Railroad Department of this Commission may make periodic inspections of any interlocking within the State of Indiana with the view of keeping the Commission fully and properly informed as to the condition of railroads and the manner in which they are operated with reference to the security and accommodation of the public. (*Indiana Department of Transportation; 105 IAC 5-2-10; No. 17688: Abandonment of Railway Stations Rule 11; filed Jan 2, 1946, 10:00 a.m.: Rules and Regs. 1947, p. 1762; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-2-10) to Indiana Department of Transportation (105 IAC 5-2-10) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### Rule 3. Reporting of Railroad Accidents

105 IAC 5-3-1	Reporting requirements
105 IAC 5-3-2	Accident defined
105 IAC 5-3-3	Accidents not within definition of preceding section; reporting requirements
105 IAC 5-3-4	Monthly follow-up reports

### 105 IAC 5-3-1 Reporting requirements

Authority: IC 8-3-1-1; IC 8-23-2-6

Affected: IC 8-3-1-21; IC 8-9-1-4

Sec. 1. Whenever any railroad, railway company, or corporation operating in rail transportation and engaged in intrastate commerce within the state of Indiana suffers accident, as described in IC 8-3-1-21, the railroad division of the Indiana department of transportation shall be notified immediately, either by telegram or telephone. Providing that, should such accident occur other than during regular office hours of the department, i.e., 8:00 a.m. to 4:30 p.m., or on Saturday, Sunday, or holidays, such report will be made to the operation center of the

Indiana state police department, Indianapolis, (telephone 317-232-8250) with the request that the investigator of the railroad division, then designated as the duty officer, be notified immediately. (*Indiana Department of Transportation; 105 IAC 5-3-1; No. 33722: Reporting of Railroad Accidents Rule 12, Sec I; filed Sep 11, 1978, 3:00 p.m.: 1 IR 638; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2218; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-3-1) to Indiana Department of Transportation (105 IAC 5-3-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-3-2 Accident defined

Authority: IC 8-1-1-12; IC 8-3-1-1  
Affected: IC 8-3-1-21; IC 8-9-1-4

Sec. 2. Accident in Section I [*section 1 of this rule*] is defined as serious injury or death to employee, passenger, trespasser, pedestrian, cyclist or motorist at any crossing; or derailment, collision (head-on or rear-end) or sideswipe of railroad cars and/or locomotives, regardless of type, that results in death or serious injury to the public; or damage to other than railroad property that would affect the safety or welfare of employees, passengers or the general public; or where explosives, chemicals, flammables or other hazardous or noxious lading is involved to the extent cars or locomotives are ruptured, afire or in any condition that would affect the safety or welfare of employees, passengers or the general public. (*Indiana Department of Transportation; 105 IAC 5-3-2; No. 33722: Reporting of Railroad Accidents Rule 12, Sec II; filed Sep 11, 1978, 3:00 p.m.: 1 IR 638; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-3-2) to Indiana Department of Transportation (105 IAC 5-3-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-3-3 Accidents not within definition of preceding section; reporting requirements

Authority: IC 8-1-1-12; IC 8-3-1-1  
Affected: IC 8-3-1-21; IC 8-9-1-4

Sec. 3. Accidents not covered in Section II [*section 2 of this rule*] in excess of \$1,750.00 (as outlined in D.O.T. Rules) and crossing accidents not covered in Section II [*section 2 of this rule*] are to be reported on monthly reports to be submitted within 30 days after close of reporting month. (*Indiana Department of Transportation; 105 IAC 5-3-3; No. 33722: Reporting of Railroad Accidents Rule 12, Sec III; filed Sep 11, 1978, 3:00 p.m.: 1 IR 638; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation

(100 IAC 6-3-3) to Indiana Department of Transportation (105 IAC 5-3-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 5-3-4 Monthly follow-up reports

Authority: IC 8-1-1-12; IC 8-3-1-1  
Affected: IC 8-3-1-21; IC 8-9-1-4

Sec. 4. Accidents initially reported by telegram or telephone in Section II [*section 2 of this rule*] are to be reported on monthly reports to be submitted within 30 days after close of reporting month. (*Indiana Department of Transportation; 105 IAC 5-3-4; No. 33722: Reporting of Railroad Accidents Rule 12, Sec IV; filed Sep 11, 1978, 3:00 p.m.: 1 IR 638; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-3-4) to Indiana Department of Transportation (105 IAC 5-3-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### Rule 4. Railroad Construction; Lateral and Vertical Clearance Requirements

- |                 |  |
|-----------------|--|
| 105 IAC 5-4-1   | Submission of verified petition for relief from statutory track clearance requirements |
| 105 IAC 5-4-2   | Designated form and verification of petition   |
| 105 IAC 5-4-3   | Service of petition upon interested parties  |
| 105 IAC 5-4-4   | Procedure for summary relief and public hearings ( <i>Repealed</i> )                   |
| 105 IAC 5-4-5   | Basis for granting requested relief  |
| 105 IAC 5-4-5.1 | Requests for review of the department's decision                                       |
| 105 IAC 5-4-6   | Minimum lateral clearances; docks  |
| 105 IAC 5-4-7   | Minimum lateral clearances; multiple tracks  |
| 105 IAC 5-4-8   | Minimum vertical clearances  |
| 105 IAC 5-4-9   | Crane operation over tracks  |
| 105 IAC 5-4-10  | Lighted warning signs  |
| 105 IAC 5-4-11  | Tracks kept free of debris and spillage  |
| 105 IAC 5-4-12  | Reduced clearance; written notice  |
| 105 IAC 5-4-13  | Appendix; warning sign specifications  |

### 105 IAC 5-4-1 Submission of verified petition for relief from statutory track clearance requirements

Authority: IC 8-8-1-12; IC 8-23-2-6  
Affected: IC 8-3-1-21; IC 8-8-1-11; IC 8-8-1-12; IC 8-9-1-4

Sec. 1. Before any railroad carrier, or any party, person, association, municipality, or private corporation (hereinafter "petitioner") builds, maintains, alters, or rebuilds a structure, or any part thereof, which will have less lateral or vertical clearance distance than provided for by chapter 118 of the Acts of the Indiana general assembly of 1907, as amended, as found at IC 8-8-1-11 through IC 8-8-1-12 (hereinafter the "Act"), a verified petition setting forth the clearance distances requested

(hereinafter the “petition”) shall be submitted to the department of transportation (hereinafter the “department”). (*Indiana Department of Transportation; 105 IAC 5-4-1; filed May 7, 1982, 2:05 p.m.: 5 IR 1179; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-1) to Indiana Department of Transportation (105 IAC 5-4-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-4-2 Designated form and verification of petition**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 2. The petition shall be in the form designated by the department and shall be verified by the petitioner. (*Indiana Department of Transportation; 105 IAC 5-4-2; filed May 7, 1982, 2:05 p.m.: 5 IR 1179; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-2) to Indiana Department of Transportation (105 IAC 5-4-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-4-3 Service of petition upon interested parties**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 4-21.5; IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 3. Petitioner shall, concurrently with the filing of the petition with the department, post and maintain (until thirty-one (31) days after filing and service of the petition) a copy of the petition and all attachments thereto at eye level in plain view at the site for which relief is requested. The petitioner shall also serve a copy of the petition upon the utility consumer counselors' office and any other party of interest. Said service, and certification thereof, shall be made in the form and manner provided by the Indiana Rules of Trial Procedure and IC 4-21.5. (*Indiana Department of Transportation; 105 IAC 5-4-3; filed May 7, 1982, 2:05 p.m.: 5 IR 1180; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-3) to Indiana Department of Transportation (105 IAC 5-4-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-4-4 Procedure for summary relief and public hearings (Repealed)**

Sec. 4. (*Repealed by Indiana Department of Transportation; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2225*)

#### **105 IAC 5-4-5 Basis for granting requested relief**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 5. The department will decide whether to grant relief from the statutory track clearance requirements within sixty (60) days of the petition's filing. The decision of the department with respect to reduction of a statutorily required clearance distance shall be based upon the necessity for such relief and whether the clearance area may be safely utilized if such relief is granted. (*Indiana Department of Transportation; 105 IAC 5-4-5; filed May 7, 1982, 2:05 p.m.: 5 IR 1180; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-4-5) to Indiana Department of Transportation (105 IAC 5-4-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-4-5.1 Requests for review of the department's decision**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 4-21.5; IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 5.1. Any interested party desiring review of the department's decision on the petition may petition for review under IC 4-21.5. (*Indiana Department of Transportation; 105 IAC 5-4-5.1; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2220; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 5-4-6 Minimum lateral clearances; docks**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 6. Where relief is sought from the lateral clearance distances required by the Act for a public or private dock (“dock” being defined as any structure from which railroad cars are loaded or unloaded), the department may grant such relief in accordance with the following provisions:

- (1) That access is available to the dock surface by stair or ladder on the side from which normal duties will be performed.
- (2) That a clearance distance of at least eight (8) feet is maintained on the side of the tracks opposite from the structure.
- (3) That a yellow stripe, measuring not less than four (4) inches in width and extending the length of the dock within the clearance area, will be painted upon the surface of the dock not less than eight (8) feet from the center of the track and no structure, device, or materials shall be installed or maintained on the surface of the dock between the yellow line and the center of the track during any movement of railroad cars in the clearance area.

(4) That if the dock is located inside a structure, a ground level pedestrian doorway (of normal and customary proportions) into the structure and with access to the dock will be maintained on each side of the structure from which normal duties will be performed.

*(Indiana Department of Transportation; 105 IAC 5-4-6; filed May 7, 1982, 2:05 p.m.: 5 IR 1180; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2220; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-4-6) to Indiana Department of Transportation (105 IAC 5-4-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 5-4-7 Minimum lateral clearances; multiple tracks**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 7. A petition of the type outlined in sections 1 through 5.1 of this rule is required where relief is sought from the clearance distances required by the Act for clearance areas involving the entrance of two (2) or more railroad tracks into a structure. *(Indiana Department of Transportation; 105 IAC 5-4-7; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2220; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-4-7) to Indiana Department of Transportation (105 IAC 5-4-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 5-4-8 Minimum vertical clearances**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 8. A petition of the type outlined in sections 1 through 5.1 of this rule is required where relief is sought from the vertical clearance distance above any part of railroad tracks as required by the Act. *(Indiana Department of Transportation; 105 IAC 5-4-8; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2220; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-4-8) to Indiana Department of Transportation (105 IAC 5-4-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 5-4-9 Crane operation over tracks**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 9. A petition of the type outlined in sections 1 through 5.1 of this rule is required where relief is sought from the vertical clearance distance required by the Act

due to the operation of an overhead crane above the railroad tracks. The department may approve such operation provided that, in addition to the sign hereinafter provided, a flashing red light shall be located on each side of the tracks at eight (8) feet to twelve (12) feet above the level of the top of the rails of the track in advance of the clearance area (erected and maintained in the size, manner, and in such a position as the department may direct) and that said light shall be lighted at all times that such crane is operating above the tracks and extinguished only when the crane and appurtenances thereto are no longer within the clearance distances prescribed by the Act. *(Indiana Department of Transportation; 105 IAC 5-4-9; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-4-9) to Indiana Department of Transportation (105 IAC 5-4-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 5-4-10 Lighted warning signs**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 10. For each clearance area that the department has approved a reduction of the clearance distance required by the Act, separately lighted warning signs advising of the close clearance distance, as described in section 13 of this rule hereto, will be erected and maintained in the size, manner, and in such positions as the department may direct. *(Indiana Department of Transportation; 105 IAC 5-4-10; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-4-10) to Indiana Department of Transportation (105 IAC 5-4-10) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 5-4-11 Tracks kept free of debris and spillage**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 11. For each clearance area that the department has approved a reduction of the clearance distance required by the Act, said clearance area will be kept free of all debris, spillage, oil and grease, and the footing will be maintained in a safe and even manner at all times. *(Indiana Department of Transportation; 105 IAC 5-4-11; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from*

*Department of Transportation (100 IAC 6-4-11) to Indiana Department of Transportation (105 IAC 5-4-11) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 5-4-12 Reduced clearance; written notice**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 12. For each clearance area that the department has approved a reduction of the clearance distance required by the Act, the petitioner and the railroad serving the clearance area shall prior to the use of the clearance area certify in writing to the department that written notice of the reduced clearance has been provided to each of their respective employees, and other third persons known by them to frequent the clearance area. (*Indiana Department of Transportation; 105 IAC 5-4-12; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Transportation (100 IAC 6-4-12) to Indiana Department of Transportation (105 IAC 5-4-12) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 5-4-13 Appendix; warning sign specifications**

**Authority:** IC 8-8-1-12; IC 8-23-2-6

**Affected:** IC 8-3-1-21; IC 8-8-1-11; IC 8-9-1-4

Sec. 13. Each warning sign shall meet the following minimum specifications:

- (1) It shall be rectangular and constructed with dimensions of no less than twenty-four (24) inches in height and sixteen (16) inches in width.
- (2) The sign shall be constructed of metal or wood and shall have a flat white background and black lettering.
- (3) Where less than statutory lateral clearance is maintained the sign shall be worded as follows:  
The word "WARNING" shall be printed on the sign with letters at least three (3) inches in height and no less than three-eighths [*sic.*] (3/8) inch in letter line or stroke width, with the top edge of letters within two (2) inches of the top edge of the sign background. The words, "No Clearance For Man On Side Of Car," shall be printed on the sign in letters no less than one and one-half (1½) inches high with brush strokes of at least one-fourth (¼) inch and placed three (3) lines below the word "WARNING."
- (4) Where less than statutory vertical clearance is maintained the words, "WARNING" and "No Clearance For Man On Top Of Car," shall be printed on the sign in accordance with the specifications set forth in subdivision (3).

*(Indiana Department of Transportation; 105 IAC 5-4-13; filed May 7, 1982, 2:05 p.m.: 5 IR 1181; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2221; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-4-13) to Indiana Department of Transportation (105 IAC 5-4-13) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**Rule 5. Rail Service Continuation Subsidies**

105 IAC 5-5-1	Applicability of rule
105 IAC 5-5-2	Policy statement; required contributions
105 IAC 5-5-3	Definitions
105 IAC 5-5-4	Administrative procedure; petitions; hearings
105 IAC 5-5-5	Department prerogatives

**105 IAC 5-5-1 Applicability of rule**

**Authority:** IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1.5-2

**Affected:** IC 8-3-1.5-2; IC 8-3-1.5-23

Sec. 1. Application of Rules. These rules shall apply to any proceeding relative to rail service continuation assistance to rail segments included in the State Rail Plan as eligible for such assistance. (*Indiana Department of Transportation; 105 IAC 5-5-1; No. 34227: Rail Service Continuation Subsidies Rule I; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p. 397; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Transportation (100 IAC 6-5-1) to Indiana Department of Transportation (105 IAC 5-5-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 5-5-2 Policy statement; required contributions**

**Authority:** IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1.5-2

**Affected:** IC 8-3-1.5-3; IC 8-3-1.5-23

Sec. 2. Commission Policy. It shall be the policy of the Commission in all proceedings hereunder to encourage and stimulate financial contribution by rail users, local and/or regional transportation authorities and/or other interested petitioning persons to the fullest extent possible toward any rail service continuation assistance authorized by the Commission pursuant to the State Rail Preservation Act [*IC 8-3-1.5*], the objective being that any rail segment designated by the State Rail Plan as eligible for rail service continuation assistance shall become self-sustaining or fully subsidized by those persons served by such rail segments at the earliest possible date. (*Indiana Department of Transportation; 105 IAC 5-5-2; No. 34227: Rail Service Continuation Subsidies Rule II; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p. 397; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Transportation (100 IAC 6-5-2) to Indiana*

*Department of Transportation (105 IAC 5-5-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 5-5-3 Definitions**

**Authority:** IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1.5-2

**Affected:** IC 8-3-1.5-1; IC 8-3-1.5-23

Sec. 3. Definitions. (A) Where applicable the definitions set forth in the State Rail Preservation Act [IC 8-3-1.5] and the federal Regional Rail Reorganization Act of 1973 shall be applicable to these rules, and

(B) The term "Rail Segment" shall mean a portion of track identified by the United States Railway Association, in their Final System Plan, the limits of which are defined in terms of mile posts, and

(C) The term "Rail Service Continuation Assistance" shall mean any financial assistance provided to cover operating losses, rehabilitation, maintenance, administration or other services necessary for the continued operation of rail service on a rail segment, and

(D) The term "State Rail Plan" shall mean a comprehensive plan for rail segments not included in the Final System Plan of the United States Railway Association pursuant to the federal Regional Rail Reorganization Act of 1973 that must be prepared by the State of Indiana in order to receive federal funds pursuant to said act. (*Indiana Department of Transportation; 105 IAC 5-5-3; No. 34227: Rail Service Continuation Subsidies Rule III; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p. 397; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-5-3) to Indiana Department of Transportation (105 IAC 5-5-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 5-5-4 Administrative procedure; petitions; hearings**

**Authority:** IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1.5-2

**Affected:** IC 8-1-2-47; IC 8-3-1.5-2; IC 8-3-1.5-23

Sec. 4. Procedure. (A) When consistent with these rules, the Rules and Regulations of This Commission Concerning Practices and Procedure, as found at Burns Indiana Administrative Rules and Regulations, Section 54-401 [IC 8-1-2-47] et seq., shall apply with respect to any proceeding conducted pursuant to the State Rail Preservation Act [IC 8-3-1.5] and these rules.

(B) Any interested person, jointly or separately, may apply for rail service continuation assistance with regard to any rail segment designated by the State Rail Plan as eligible therefor by petitioning the Public Service Commission of Indiana for such assistance within 30 days of final approval by the Commission of the State Rail Plan, or any amendments to that Plan.

(C) All petitions filed hereunder shall specify:

- (1) petitioner's interest in the rail segment involved.
- (2) the specific rail segment involved and the name of the railroad operating company last known to petitioner to have operated rail service over such rail segment,
- (3) a complete description of the nature and degree of the rail service continuation assistance requested,
- (4) the petitioner's ability and intent to contribute toward the requested rail service continuation assistance and the nature of said contribution,
- (5) a proposed timetable within which such rail segment may become self-sustaining or completely subsidized by petitioner.

(D) Any person who jointly or separately files a petition herein, shall within 20 days thereof, cause notice of such filing to be published in at least one newspaper of general circulation published in each county in which the rail segment involved is located.

(E) Within 45 days after approval of the State Rail Plan the Commission shall cause a pre-hearing conference to be scheduled with respect to each rail segment for which one or more petitions for Rail Service Continuation Assistance has been filed.

(F) Following pre-hearing conference and order thereon all petitions concerning the same rail segment shall be consolidated for hearing by the Commission at the times and places determined by the Commission pursuant to the pre-hearing conference order and pursuant to notice to all parties of record without further publication. (*Indiana Department of Transportation; 105 IAC 5-5-4; No. 34227: Rail Service Continuation Subsidies Rule IV; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p. 398; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-5-4) to Indiana Department of Transportation (105 IAC 5-5-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 5-5-5 Department prerogatives**

**Authority:** IC 8-1-1-3; IC 8-1-1-12; IC 8-3-1.5-2

**Affected:** IC 8-3-1.5-2; IC 8-3-1.5-23

Sec. 5. Commission Prerogatives. Notwithstanding any provision herein contained, the Commission may at any time and at its discretion initiate and conduct such proceedings as it deems appropriate with respect to rail service continuation assistance or any other matter authorized by and not inconsistent with the State Rail Preservation Act [IC 8-3-1.5] and the State Rail Plan. (*Indiana Department of Transportation; 105 IAC 5-5-5; No. 34227: Rail Service Continuation Subsidies Rule V; filed Dec 29, 1975, 1:30 p.m.: Rules and Regs. 1976, p.*

398; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-5-5) to Indiana Department of Transportation (105 IAC 5-5-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **Rule 6. Railroad Policemen; Basic Training and Fitness Standards**

- 105 IAC 5-6-1 Completion of basic training course; waiver based on previous experience and training
- 105 IAC 5-6-2 Location of basic training course
- 105 IAC 5-6-3 Failure to complete course; revocation of commission
- 105 IAC 5-6-4 Minimum passing score
- 105 IAC 5-6-5 Eligibility for commission

#### **105 IAC 5-6-1 Completion of basic training course; waiver based on previous experience and training**

**Authority:** IC 8-3-17-1; IC 8-23-2-6  
**Affected:** IC 5-2-1-1; IC 5-2-1-11

Sec. 1. All railroad police officers employed on or after January 1, 1976, by any railroad operating within the state of Indiana whether said employment is on a probationary, permanent, or other basis, shall, within one (1) year of the date of employment successfully complete the minimum basic training course prescribed for Indiana railroad policemen by the Indiana law enforcement training board (hereinafter the "board"). Provided, however, that any such railroad policeman police officer [*sic.*] who has had previous law enforcement training meeting or exceeding the standards prescribed by the board may, upon proof of such previous experience and training and the recommendation of the board, be granted a waiver of the training mandated herein, at the discretion of the Indiana department of transportation (hereinafter the "department"). (*Indiana Department of Transportation; 105 IAC 5-6-1; No. 34294: Fitness Standards for Railroad Policemen A; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 325; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2222; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-6-1) to Indiana Department of Transportation (105 IAC 5-6-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-6-2 Location of basic training course**

**Authority:** IC 8-3-17-1; IC 8-23-2-6  
**Affected:** IC 5-2-1-1; IC 5-2-1-11

Sec. 2. Said minimum basic training course will be taken at the central training facility provided by the board. (*Indiana Department of Transportation; 105 IAC*

5-6-2; No. 34294: *Fitness Standards for Railroad Policemen B; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 326; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2222; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-6-2) to Indiana Department of Transportation (105 IAC 5-6-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-6-3 Failure to complete course; revocation of commission**

**Authority:** IC 8-3-17-1; IC 8-23-2-6  
**Affected:** IC 5-2-1-1; IC 8-3-17-3.5

Sec. 3. Any railroad police officer described in section 1 of this rule who fails to successfully complete said required basic training course within one (1) year after first or original employment on or after January 1, 1976, shall have his or her commission revoked by the department after the first anniversary of his date of appointment. (*Indiana Department of Transportation; 105 IAC 5-6-3; No. 34294: Fitness Standards for Railroad Policemen C; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 326; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2222; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-6-3) to Indiana Department of Transportation (105 IAC 5-6-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-6-4 Minimum passing score**

**Authority:** IC 8-3-17-1; IC 8-23-2-6  
**Affected:** IC 5-2-1-1; IC 8-3-17-3.5

Sec. 4. The board shall establish, and apply uniformly to all railroad police officers attending the central training facility, a minimum passing score as prescribed by the board's basic training course for railroad police officers. (*Indiana Department of Transportation; 105 IAC 5-6-4; No. 34294: Fitness Standards for Railroad Policemen D; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 326; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2223; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Transportation (100 IAC 6-6-4) to Indiana Department of Transportation (105 IAC 5-6-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 5-6-5 Eligibility for commission**

**Authority:** IC 8-3-17-1; IC 8-23-2-6  
**Affected:** IC 5-2-1-1; IC 8-3-17-3.5

Sec. 5. In order to be eligible for commission as a railroad police officer, an applicant must comply with the following:

(1) The applicant shall have reached his or her twenty-first birthday.

(2) The applicant shall possess an acuity of vision as prescribed by the board.

(3) The applicant shall be a high school graduate as evidenced by a diploma issued by a high school accredited by the department or agency of a state authorized to accredit high schools. An equivalency diploma issued by such an accredited high school is acceptable.

(4) The applicant shall possess *[sic.]* a valid driving license.

(5) The applicant shall be of good reputation and character. The employing railroad shall conduct a character and background investigation on each applicant prior to applicant receiving commission, and the results shall be submitted in written form (Appendix A attached) for inspection by the department or its authorized representative.

(6) The applicant shall not have been convicted of a felony or any crime involving moral turpitude. The applicant shall be fingerprinted and a search shall be made of local, state, and national fingerprint files to disclose any criminal conviction record; and the fingerprint cards and any identification records shall be submitted for inspection by the department or its authorized representative.

(7) A dishonorable discharge from military service shall disqualify the applicant and a discharge other than honorable may be grounds for rejection in accordance with subdivisions 5 through 6.

(8) A physician approved by the employing railroad with an unlimited license to practice medicine shall examine the applicant to aid in determining that the applicant is physically and emotionally fit for normal police functions. The applicant shall satisfy the minimum medical fitness standards of the employing railroad company. The results shall be retained in written form for inspection by the department or its authorized representative. A copy of the report of the physical examination shall be presented to the board in the prescribed form prior to acceptance for training at the central training facility. Such examination shall have been administered to the applicant within one (1) year prior to acceptance for training.

*(Indiana Department of Transportation; 105 IAC 5-6-5; No. 34294; Fitness Standards for Railroad Policemen E; filed Jan 7, 1976, 10:30 a.m.: Rules and Regs. 1977, p. 326; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2223; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Transportation (100 IAC 6-6-5) to Indiana Department of Transportation (105 IAC 5-6-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

## **Rule 7. Downgrading of Rail-Highway Crossing Protection**

105 IAC 5-7-1	Definitions
105 IAC 5-7-2	Submission of verified petition for the removal of automatic train-activated warning signals from rail-highway grade crossings
105 IAC 5-7-3	Contents of the petition
105 IAC 5-7-4	Service of petition upon interested parties
105 IAC 5-7-5	Decision; review
105 IAC 5-7-6	Requests for public hearing

### **105 IAC 5-7-1 Definitions**

**Authority:** IC 8-6-7.7-2; IC 8-23-2-6

**Affected:** IC 8-6-7.7-2

Sec. 1. For this rule, “automatic train-activated warning signal” means gates, cantilever flashers, standard flashers, audibles, or wigwags. *(Indiana Department of Transportation; 105 IAC 5-7-1; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2223; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

### **105 IAC 5-7-2 Submission of verified petition for the removal of automatic train-activated warning signals from rail-highway grade crossings**

**Authority:** IC 8-6-7.7-2; IC 8-23-2-6

**Affected:** IC 8-6-7.7-1; IC 8-6-7.7-2

Sec. 2. Before any railroad carrier, party, person, association, municipality, or private corporation (hereinafter “petitioner”) removes any automatic train-activated warning signals from a grade crossing (as defined by IC 8-6-7.7-1), a verified petition (hereinafter “petition”) requesting the consent of the Indiana department of transportation (hereinafter “department”) shall be submitted to the department. *(Indiana Department of Transportation; 105 IAC 5-7-2; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

### **105 IAC 5-7-3 Contents of the petition**

**Authority:** IC 8-6-7.7-2; IC 8-23-2-6

**Affected:** IC 8-6-7.7-2

Sec. 3. The petition shall be in the form designated by the department and shall be verified by the petitioner. *(Indiana Department of Transportation; 105 IAC 5-7-3; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

### **105 IAC 5-7-4 Service of petition upon interested parties**

**Authority:** IC 8-6-7.7-2; IC 8-23-2-6

**Affected:** IC 4-21.5; IC 8-6-7.7-2

Sec. 4. Petitioner shall, concurrent with the filing of the petition with the department, serve a copy of the petition upon the utility consumer counselor's office and the local governing body. (*Indiana Department of Transportation; 105 IAC 5-7-4; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 5-7-5 Decision; review**

**Authority:** IC 8-6-7.7-2; IC 8-23-2-6  
**Affected:** IC 4-21.5; IC 8-6-7.7-2

Sec. 5. The department will decide whether to grant consent for the removal of the automatic train-activated warning signals within one hundred twenty (120) days of the petition's filing. The decision of the department with respect to consent for the removal of automatic train-activated warning signals shall be based upon the information contained in the petition, department inspection of the crossing in question, applicable statutes and regulations, and any other relevant information filed with the department. The petition will be approved if the department determines that the grade crossing may be safely utilized in the absence of automatic train-activated warning signals. Any interested party desiring review of the department's decision on the petition may petition for review under IC 4-21.5. (*Indiana Department of Transportation; 105 IAC 5-7-5; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 5-7-6 Requests for public hearing**

**Authority:** IC 8-6-7.7-2; IC 8-23-2-6  
**Affected:** IC 4-21.5; IC 8-6-7.7-2

Sec. 6. If an interested party requests a public hearing on the petition at any time before the department has reached a decision, the department will conduct such a hearing under the provisions of IC 4-21.5. If such a hearing is requested, the one hundred twenty (120) day decision deadline set in section 5 of this rule will be postponed until the hearing process is complete. (*Indiana Department of Transportation; 105 IAC 5-7-6; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **Rule 8. Crossing Construction or Relocation**

105 IAC 5-8-1	Submission of verified petition to establish, alter, or relocate a rail-highway grade crossing
105 IAC 5-8-2	Contents of the petition
105 IAC 5-8-3	Service of petition upon interested parties
105 IAC 5-8-4	Decision; review
105 IAC 5-8-5	Requests for public hearing
105 IAC 5-8-6	Written notice of compliance

#### **105 IAC 5-8-1 Submission of verified petition to establish, alter, or relocate a rail-highway grade crossing**

**Authority:** IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6  
**Affected:** IC 8-6-1

Sec. 1. Before any railroad carrier, or any party, person, association, municipality, or private corporation (hereinafter "petitioner") constructs, alters, or relocates a rail-highway grade crossing, a verified petition (hereinafter "petition") requesting the approval of the Indiana department of transportation (hereinafter "department") shall be submitted to the department. (*Indiana Department of Transportation; 105 IAC 5-8-1; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 5-8-2 Contents of the petition**

**Authority:** IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6  
**Affected:** IC 8-6-1

Sec. 2. The petition shall be in the form designated by the department and shall be verified by the petitioner. (*Indiana Department of Transportation; 105 IAC 5-8-2; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 5-8-3 Service of petition upon interested parties**

**Authority:** IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6  
**Affected:** IC 4-21.5; IC 8-6-1

Sec. 3. Petitioner shall, concurrent with the filing of the petition with the department, serve a copy of the petition upon the Indiana consumer counselors' office and any other party of interest including but not limited to the railroad and the local governing body. (*Indiana Department of Transportation; 105 IAC 5-8-3; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2224; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 5-8-4 Decision; review**

**Authority:** IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6  
**Affected:** IC 4-21.5; IC 8-6-1

Sec. 4. The department will decide whether to grant approval for the construction, alteration, or relocation of a rail-highway grade crossing within ninety (90) days of the petition's filing. Any interested party desiring review of the department's decision on the petition may petition for review under IC 4-21.5. (*Indiana Department of Transportation; 105 IAC 5-8-4; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2225; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 5-8-5 Requests for public hearing****Authority:** IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6**Affected:** IC 4-21.5; IC 8-6-1

Sec. 5. If an interested party requests a public hearing on the petition at any time before the department has reached a decision, the department will conduct such a hearing under the provisions of IC 4-21.5. If such a hearing is requested, the ninety (90) day decision deadline set in section 4 of this rule will be postponed until the hearing process is complete. (*Indiana Department of Transportation; 105 IAC 5-8-5; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2225; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 5-8-6 Written notice of compliance****Authority:** IC 8-6-1-7; IC 8-6-1-9; IC 8-23-2-6**Affected:** IC 8-6-1

Sec. 6. Upon fulfillment of the provisions of the department's order, the petitioner shall notify the department in writing that all conditions have been complied with. (*Indiana Department of Transportation; 105 IAC 5-8-6; filed Aug 8, 1989, 3:30 p.m.: 12 IR 2225; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**Rule 9. Filing of Railroad Operating Information**

105 IAC 5-9-1 Submission of current operating rule book  
 105 IAC 5-9-2 Submission of current operating timetables  
 105 IAC 5-9-3 Submission of bulletin orders and notices

**105 IAC 5-9-1 Submission of current operating rule book****Authority:** IC 8-3-1-1; IC 8-9-1-1**Affected:** IC 8-9-1-1

Sec. 1. Any railroad operating or incorporated in Indiana shall submit one (1) copy of its current operating rule book covering operations in Indiana to the department of transportation ("department"). Rule books shall be filed with the department within fifteen (15) days of their adoption or amendment. (*Indiana Department of Transportation; 105 IAC 5-9-1; filed Jan 16, 1990, 4:50 p.m.: 13 IR 1014; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 5-9-2 Submission of current operating timetables****Authority:** IC 8-3-1-1; IC 8-3-1-18; IC 8-3-1-21**Affected:** IC 8-3-1-18; IC 8-3-1-21

Sec. 2. Any railroad operating or incorporated in Indiana shall submit one (1) copy of its current operating timetable for any operations within Indiana to the depart-

ment. Timetables shall be filed with the department within fifteen (15) days of their adoption or amendment. (*Indiana Department of Transportation; 105 IAC 5-9-2; filed Jan 16, 1990, 4:50 p.m.: 13 IR 1014; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 5-9-3 Submission of bulletin orders and notices****Authority:** IC 8-3-1-1; IC 8-3-1-18; IC 8-3-1-21**Affected:** IC 8-3-1-18; IC 8-3-1-21

Sec. 3. Any railroad operating or incorporated in Indiana shall submit one (1) copy of any bulletin orders or employee notices that are issued covering any aspect of operations in Indiana to the department. Bulletin orders or employee notices shall be filed with the department within one (1) week of the time that they are issued. (*Indiana Department of Transportation; 105 IAC 5-9-3; filed Jan 16, 1990, 4:50 p.m.: 13 IR 1014; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**Rule 10. Opening and Closing Railroad Crossings**

105 IAC 5-10-1 Criteria for opening a crossing

105 IAC 5-10-2 Criteria for abolishing a crossing

**105 IAC 5-10-1 Criteria for opening a crossing****Authority:** IC 8-6-7.7-3.1; IC 8-23-2-6**Affected:** IC 8-6-1-7; IC 8-6-7.7

Sec. 1. Subject to the provisions of IC 8-6-1-7 and IC 8-6-7.7, the department may approve a petition to open a crossing after making findings and conclusions which reflect consideration of all the following factors, to the extent that same are relevant to the crossing decision under consideration:

(1) Passenger trains do not operate in excess of sixty (60) m.p.h. at the location of the proposed crossing (Class 3 FRA track classification or higher). In cases where passenger service does not operate, this criteria is not applicable.

(2) An alternate public crossing is not located within one (1) mile of the proposed crossing.

(3) No crossings within two (2) miles of the proposed crossing have had at least three (3) accidents in the preceding five (5) years, with the expected characteristics of the proposed crossing being similar to the nearby crossings. Characteristics for all crossings within two (2) miles of the proposed crossing must be submitted with the petition.

(4) The proposed crossing will have expected average annual daily traffic (AADT) of five hundred (500) or greater in rural areas or one thousand (1,000) or greater in urbanized areas, where the traffic collection procedure is completed in accordance with the Federal Highway

Administration's (FHWA) Traffic Monitoring Guide, Third Edition, February 1995. This requirement shall not be applicable where a nonmotorized public grade crossing has been petitioned to the department for opening.

(5) Consideration shall be given to the overall design speed of the roadway approaches involving the proposed grade crossing. This requirement shall not be applicable where a nonmotorized public grade crossing has been petitioned to the department for opening.

(6) There are not more than ten (10) train movements per day at the proposed crossing.

(7) Freight trains do not operate in excess of twenty-five (25) m.p.h. at the location of the proposed crossing (Class 2 FRA track classification or higher).

(8) The proposed crossing has, at a minimum, standard crossbucks, pavement markings, and flashing lights. Any proposed crossing must also meet all standards for a rail-highway intersection as provided in the Indiana Manual on Uniform Traffic Control Devices, which is incorporated by reference at 105 IAC 9-2-1. The requirement for flashing lights may be waived if the petitioner can demonstrate that such devices are not essential for safety at the proposed crossing.

(9) The proposed crossing is not within two hundred (200) feet of a roadway intersection. Adjustment of this criteria will consider the maximum queue expected for the design hour.

(10) The proposed crossing does not have, at a minimum, an eighty (80) degree intersection alignment.

(11) The proposed crossing will not provide access for trucks carrying hazardous materials unless the utilization of the crossing by such traffic is incidental.

(12) The proposed crossing will not provide access for vehicles carrying passenger for hire unless the utilization of the crossing by such traffic is incidental.

(13) The proposed crossing will not provide access for school buses unless the use of the crossing by the school bus traffic provides enhanced safety over other transportation routes, as documented by the highest school transportation official.

(14) The proposed crossing will provide improved safety access for emergency vehicles. The department requires documentation from the highest emergency response official whose jurisdiction is located where the crossing is proposed for opening.

(15) While a new crossing may satisfy the conditions listed in this section, if it can be shown by evidence that there are extenuating circumstances which, in the opinion of the department, a new crossing would still constitute a hazard, it would be denied.

(16) While a new crossing may not satisfy the conditions listed in this section, if it can be shown by evidence that there are extenuating circumstances

which, in the opinion of the department, a new crossing would still be justified, it would be approved.

*(Indiana Department of Transportation; 105 IAC 5-10-1; filed Jun 17, 1998, 9:00 a.m.: 21 IR 4190; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Aug 5, 2002, 1:05 p.m.: 25 IR 4051)*

### **105 IAC 5-10-2 Criteria for abolishing a crossing**

**Authority:** IC 8-6-7.7-3.1; IC 8-23-2-6

**Affected:** IC 8-6-7.7

Sec. 2. Subject to the provisions of IC 8-6-7.7, a crossing may be closed after making findings and conclusions which reflect consideration of all the following factors, to the extent that same are relevant to the crossing decision under consideration:

(1) The crossing is located where passenger train service operates at greater than ten (10) m.p.h. (FRA Accepted Track Classification). In cases where passenger service does not operate, this criteria is not applicable.

(2) The crossing is located in a rail line section with at least four (4) crossings within an urban area and three (3) at grade crossing within a rural area within a one (1) mile segment along the railroad corridor.

(3) The crossing has an accident prediction rate of two-hundredths (.02) or higher, as determined by the Federal Railroad Administration's (FRA) Accident Prediction methodology, as set forth in the Rail-Highway Crossing Resource Allocation Procedure, Third Edition, August 1987.

(4) The crossing has an average annual daily traffic (AADT) of five hundred (500) or less within rural areas or one thousand (1,000) or less within urbanized areas, where the traffic collection procedure is completed by guidance provided in the Federal Highway Administration's (FHWA) Traffic Monitoring Guide, Third Edition, February 1995. This requirement shall not be applicable when it refers to a nonmotorized public grade crossing.

(5) The posted or established speed limit on the road through the crossing exceeds ten (10) m.p.h. within one thousand (1,000) feet of the crossing. This requirement shall not be applicable when it refers to a nonmotorized public grade crossing.

(6) The crossing has more than ten (10) train movements per day which utilize the crossing.

(7) The crossing is located where freight train service operates at greater than twenty-five (25) m.p.h. (Class 2 FRA track classification or higher).

(8) The crossing has, at a minimum, a standard crossbuck or a standard crossbuck with flasher or other activated warning device.

(9) The roadway approach to the crossing is skewed or the physical characteristics of the crossing otherwise limit the

ability to traverse the crossing in a safe manner.

(10) If the crossing is utilized by the following types of vehicles, then the use by such vehicles should be considered in determining whether a crossing stays open or is closed. The presence or lack of presence of any of the following types of vehicles may not solely be responsible for closure or nonclosure of a crossing:

- (A) Trucks carrying hazardous materials.
- (B) Vehicles carrying passengers for hire.
- (C) School buses.
- (D) Emergency vehicles.

*(Indiana Department of Transportation; 105 IAC 5-10-2; filed Jun 17, 1998, 9:00 a.m.: 21 IR 4191; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Aug 5, 2002, 1:05 p.m.: 25 IR 4052)*

## ARTICLE 6. GENERAL PROVISIONS FOR HIGHWAYS

*NOTE: Department of Highways was transferred to Indiana Department of Transportation. Whenever in any promulgated rule text there appears a reference to Department of Highways, substitute Indiana Department of Transportation.*

- Rule 1. Real Estate Speculation by Employees Prohibited
- Rule 2. Licensing of Contractors
- Rule 3. Employee Complaint Procedure; Professional and Technical Employees; Demotion or Dismissal Actions *(Expired)*

### Rule 1. Real Estate Speculation by Employees Prohibited

105 IAC 6-1-1 Real estate speculation prohibited

#### 105 IAC 6-1-1 Real estate speculation prohibited

**Authority:** IC 8-9.5-4-8; IC 8-13-1-6  
**Affected:** IC 8-9.5-4; IC 8-13-1-11

Sec. 1. BE IT RESOLVED (1) that it is the policy of this Commission that officials, agents or employees thereof, shall not speculate in the purchase of real estate in the State of Indiana, where such real estate is or may be involved in the building programs of the Indiana State or Federal Highways; (2) that if any official, agent or employee of this Commission shall directly or indirectly, acting singly or in concert with others, acquire any interest for speculative purposes in real estate in the State of Indiana of any kind or character which real estate is or may be involved in the manner aforesaid, such acquisition shall constitute (cause) for dismissal. *(Indiana Department of Transportation; Speculating in Real Estate; filed Jun 21, 1965, 10:00 a.m.: Rules and Regs. 1966, p. 48; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of High-*

*ways (120 IAC 1-1-1) to Indiana Department of Transportation (105 IAC 6-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### Rule 2. Licensing of Contractors

105 IAC 6-2-1 Local licenses for commission contractors not required

#### 105 IAC 6-2-1 Local licenses for commission contractors not required

**Authority:** IC 8-9.5-4-8; IC 8-13-1-6  
**Affected:** IC 8-9.5-4

Sec. 1. WHEREAS, the Indiana State Highway Commission performs contract work on State highways in various cities, towns, and counties throughout the State, and

WHEREAS, all contractors who perform contract work for the Indiana State Highway Commission are required to be pre-qualified and to conform to definite specification requirements in the construction of such work, and

WHEREAS, all work performed is given careful inspection by the Indiana State Highway Commission to insure compliance with the plans and specifications,

NOW THEREFORE BE IT RESOLVED, that, said contract work including, but not limited to the licensing of electricians, plumbers, and demolition workers engaged in Indiana State Highway Commission contract work on the State Highway System shall not be required to obtain local license. *(Indiana Department of Transportation; Licensing of Electricians, Plumbers, and Demolition Workers for State Highway Commission Contracts; filed Sep 15, 1967, 2:15 p.m.: Rules and Regs. 1968, p. 40; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 1-2-1) to Indiana Department of Transportation (105 IAC 6-2-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**Rule 3. Employee Complaint Procedure; Professional and Technical Employees; Demotion or Dismissal Actions *(Expired)***  
*(Expired under IC 4-22-2.5, effective January 1, 2002.)*

## ARTICLE 7. PERMITS FOR HIGHWAYS

*NOTE: Department of Highways was transferred to Indiana Department of Transportation. Whenever in any promulgated rule text there appears a reference to Department of Highways, substitute Indiana Department of Transportation.*

- Rule 1. Applications; Standards; Designs
- Rule 1.5. Developments; Traffic Studies
- Rule 2. Unauthorized Approaches to Driveways
- Rule 3. Signs and Billboards

**Rule 1. Applications; Standards; Designs**

105 IAC 7-1-1	Purpose of rule
105 IAC 7-1-2	Definitions
105 IAC 7-1-3	Classification of approaches
105 IAC 7-1-4	Types of permits; limited access, commercial and private driveways
105 IAC 7-1-5	Application for permit; form; fees
105 IAC 7-1-6	New application; when required
105 IAC 7-1-7	Parties to application; evidence of title
105 IAC 7-1-8	Statement of purpose and adjacent parcels
105 IAC 7-1-9	Drawings and information required
105 IAC 7-1-9.1	Developments; preliminary notification; when required
105 IAC 7-1-9.2	Developments; traffic studies; when required
105 IAC 7-1-10	Construction and materials standards
105 IAC 7-1-11	Standards and design requirements
105 IAC 7-1-12	Commercial applications; attestation
105 IAC 7-1-13	Land use and zoning approval
105 IAC 7-1-14	Performance bonds 105 IAC 7-1-15 Cross-overs
105 IAC 7-1-16	Adjacent tapers
105 IAC 7-1-17	Sight distances
105 IAC 7-1-18	Interference with traffic control devices
105 IAC 7-1-19	Drainage requirements
105 IAC 7-1-20	Authorization to proceed; objections
105 IAC 7-1-21	Inspections; revocation of permit
105 IAC 7-1-22	Noncompliance of permits without bonds
105 IAC 7-1-23	"Limitation of access" instrument
105 IAC 7-1-24	Notice of start of construction
105 IAC 7-1-25	Traffic control
105 IAC 7-1-26	Prohibited hours of work
105 IAC 7-1-27	Display of permit
105 IAC 7-1-28	Term of permit; extension; cancellation
105 IAC 7-1-29	Liability during construction
105 IAC 7-1-30	Interference with structures on right-of-way
105 IAC 7-1-31	Encroachment by advertising signs
105 IAC 7-1-32	Change in existing access; subject to new rules
105 IAC 7-1-33	Severability of rule

**105 IAC 7-1-1 Purpose of rule****Authority:** IC 9-21-19-2**Affected:** IC 8-9-5-4

Sec. 1. The Indiana department of highways is authorized to determine and establish such requirements and restrictions for driveway approaches as may be necessary to provide for the drainage of the highway, preservation of the highway and the safety and convenience of traffic on the highway. A written permit application shall be considered by the department and, if in accordance with properly established regulations and requirements, a permit shall be granted subject to appropriate conditions and provisions contained therein. All work on the permit shall be performed to the satisfaction of the department. (*Indiana Department of Transportation; Rule 1; filed Nov 16, 1971, 9:45 a.m.; Rules and Regs. 1972, p. 140;*

*filed Aug 2, 1985, 3:39 p.m.: 8 IR 1703; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 2-1-1) to Indiana Department of Transportation (105 IAC 7-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 7-1-2 Definitions****Authority:** IC 8-23-2-6; IC 9-21-19-2**Affected:** IC 8-23-2-6

Sec. 2. The following definitions apply throughout this article:

(1) "Access" means a location that allows vehicular or pedestrian traffic to cross the highway right-of-way line and is positioned at the connection of a driveway with the approach at the right-of-way line.

(2) "Applicant" means:

- (A) a person;
- (B) a partnership;
- (C) a company;
- (D) a corporation;
- (E) an association; or
- (F) an agency;

making application for a permit to perform work on an approach.

(3) "Application" means a formally prepared request for a permit that is presented by an applicant on a permit form to the department seeking permission to perform work on a highway right-of-way.

(4) "Approach" means a way or place improved for vehicular or pedestrian traffic on the highway right-of-way that joins the pavement edge of the highway with a driveway or pedestrian walkway.

(5) "Auxiliary lane" means a portion of the roadway adjoining the traveled way for parking, speed change, turning, storage for turning, weaving, truck climbing, or for other purposes.

(6) "Commercial approach" means an approach that joins the highway with a driveway to private property used for commercial purposes and to public property.

(7) "Crossover" means a paved or graded crossing in the highway median that allows vehicles to cross or to turn across the highway.

(8) "Department" means the Indiana department of highways acting directly or through its duly authorized officers and agents.

(9) "Driveway" means a way or place not on the department right-of-way that is used for vehicles.

(10) "Expiration date" means the last calendar day that the valid permit is in effect and that the approach must be in compliance with all conditions of the permit.

(11) "Field approach" means an approach that joins the highway with a driveway to private property that is

vacant, in an unimproved condition, or a farm field.

(12) "Highway" means any roadway under the jurisdiction of the department that is designated as a state route, a U.S. route, or an interstate.

(13) "Issue date" means a calendar day that the permit is granted to the applicant.

(14) "Level-of-service C" has the meaning as defined by the current edition of the Highway Capacity Manual\*.

(15) "Level-of-service D" has the meaning as defined by the current edition of the Highway Capacity Manual\*.

(16) "Limited access facility" means a highway especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of direct access, light, air, or view by reason of fact that their property abuts such limited access facility or for any other reason.

(17) "Median" means the portion of a divided highway separating the traveled way for traffic proceeding in opposite directions.

(18) "Notice" means a certified letter from the department addressed to the owner of the real estate stating that the approach for a driveway emanating from the real estate is unauthorized and providing the approximate location of the approach, a statement of any substandard elements of the approach, the action to be taken by the owner, and the deadline for completing the prescribed action.

(19) "Peak direction" means the principal direction of traffic flow during a selected period of time.

(20) "Permit" means a legal document in which the department gives written permission to an applicant to perform work on the highway right-of-way.

(21) "Permittee" means the applicant following the issuance of a permit by the department.

(22) "Private approach" means an approach that joins the highway with a driveway to private property having a residence, barn, private garage, or other improvements and is ordinarily used only by the owner or occupant of the premises, guests, and necessary service vehicles.

(23) "Purchased limited access" means rights-of-way along any highway designated by the department to be limited access facility and whose access rights have been acquired by the department.

(24) "Right-of-way" means all land under the jurisdiction of and whose use is controlled by the department.

(25) "Shoulder" means that portion of the highway right-of-way contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of roadway base and

surface courses. It is measured from the edge of pavement for traveled way or, if present, auxiliary lane to the intersection of the shoulder and fill or ditch slopes.

(26) "Street peak hour" means the hour within a selected period of time, such as the "AM street peak (weekday)", in which there is a maximum flow of traffic on the roadway system adjacent to a development or proposed development.

(27) "Title evidence" means documentation in the form of a certified search covering a period of twenty (20) years, current title insurance or certified letter from abstractor or title insurance agent certifying fee simple ownership of property.

(28) "Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel.

(29) "Traffic control" means devices, such as signs, barricades, pavement markings, and signalization, used to direct traffic in safe orderly use of the highway.

(30) "Traffic impact analysis study" means a specialized study of the impact a given type and size of new land use has or will have on a nearby public transportation system, that is prepared by or under the supervision of a registered professional engineer with experience in traffic engineering operations.

(31) "Traffic operations analysis study" means a specialized study of the possible traffic safety and operational problems a proposed development may have in the immediate vicinity of the development site due to a compromise in existing design standards caused by the development, that is prepared by or under the supervision of a registered professional engineer with experience in traffic engineering operations.

(32) "Transportation improvement program" means identified projects in the program of future projects for Indiana or political subdivisions throughout the state.

(33) "Traveled way" means the portion of roadway used for the movement of traffic, excluding shoulders and auxiliary lanes.

(34) "Unauthorized approach" means an approach that:

- (A) has been constructed, reconstructed, altered or modified;

- (B) remains incomplete or has become substandard for any reason, such as a change in land use; and

- (C) is not approved nor authorized to exist in its present condition, under present traffic pattern, by the department.

(35) "Vehicle trip generation rate" means the actual or estimated number of vehicle trips that a specific land use or development generates or is anticipated to

generate.

\*Highway Capacity Manual Special Report 209, 3<sup>rd</sup> Edition (1994) is hereby incorporated by reference. Copies of the Highway Capacity Manual may be obtained by writing to the Transportation Research Board, National Research Council, 2101 Constitution Avenue, NW, Washington D.C. 20418. Copies may also be obtained from the Indiana Department of Transportation, 100 N. Senate Avenue, Room N730, Indianapolis, Indiana 46204. (*Indiana Department of Transportation; 105 IAC 7-1-2; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1703; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3358; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-2.1) to Indiana Department of Transportation (105 IAC 7-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-3 Classification of approaches

Authority: IC 9-21-19-2

Affected: IC 8-9.5-4

Sec. 3. All approaches shall be divided into five (5) classes as follows:

- CLASS I. Private Approach—Raised curb used.
- CLASS II. Private Approach—Flush shoulder only, no raised curb.
- CLASS III. Commercial Approach—Raised curb used.
- CLASS IV. Commercial Approach—Flush shoulder only, no raised curb.
- CLASS V. Field Approach—Either raised curb or flush shoulder.

(*Indiana Department of Transportation; Rule 3; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 141; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1704; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-3) to Indiana Department of Transportation (105 IAC 7-1-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-4 Types of permits; limited access, commercial and private driveways

Authority: IC 9-21-19-2

Affected: IC 8-9.5-4

Sec. 4. The driveway approach applications shall be designated and defined as being one of the following types of permits:

Limited access driveway—Any change to an existing access, approach, and/or crossover or the construction of a new access, approach and/or crossover along a purchased or declared limited access highway.

Commercial major driveway—Any change to an existing access, approach and/or crossover or the construction of a new access, approach and/or crossover which connects the highway to private property used for commercial purposes or to a public property and which attracts enough traffic to require auxiliary lanes as determined by the department.

Commercial minor driveway—Any change to an existing access, approach and/or crossover or the construction of a new access, approach and/or crossover which connects the highway to private property used for commercial purposes or to a public property and which does not attract enough traffic to require auxiliary lanes as determined by the department.

Private driveway—Any change to an existing access, approach and/or crossover or the construction of a new access, approach and/or crossover that connects the highway to private property having a residence, barn, private garage, and improved or unimproved condition and ordinarily used only by the owner or occupant of the premises, guests and necessary service vehicles.

(*Indiana Department of Transportation; 105 IAC 7-1-4; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1705; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-3.1) to Indiana Department of Transportation (105 IAC 7-1-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-5 Application for permit; form; fees

Authority: IC 9-21-19-2

Affected: IC 8-9.5-4

Sec. 5. Application to the department for a permit to construct any approach connecting a driveway with any department highway or highway right-of-way, to cut any curb along a highway or to construct a crossover on a highway shall be made on the form as prescribed by the department. The form and accompanying documentation shall be submitted containing as many copies as may be prescribed by the department. Reasonable fees for processing driveway permits may be established by appropriate department action. (*Indiana Department of Transportation; Rule 4; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 141; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1705; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-4) to Indiana Department of Transportation (105 IAC 7-1-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-6 New application; when required

Authority: IC 9-21-19-2

Affected: IC 8-9.5-4

Sec. 6. Relocation, alteration, or remodeling of an access, approach and/or crossover, or any change in the character of the use of the access, approach and/or crossover shall be considered the construction of a new access, approach or crossover and an application for a permit shall be required. The granting or denial of such application shall be governed by the same regulations and judged by the same standards as an application for a permit for a wholly new access, approach and/or crossover.

The application shall include immediately proposed and future work affecting all locations of access to the applicant's property and adjacent parcels in which an interest is held by the applicant. (*Indiana Department of Transportation; Rule 5; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 141; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1706; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-5) to Indiana Department of Transportation (105 IAC 7-1-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 7-1-7 Parties to application; evidence of title**

**Authority:** IC 9-21-19-2  
**Affected:** IC 8-9.5-4

Sec. 7. All applications for permits under 120 IAC 2-1 [this rule] shall be made in the name of the owner of the fee simple title. All persons having any interest in the land, including but not limited to mortgagees, lessees, optionors, lien holders, and holders of other encumbrances shall join with the fee simple holder in the application. All such persons shall join in the application, shall sign and consent to the conditions of the application, and shall be bound equally thereafter by the conditions of the permit which may be issued to the permittee.

Title evidence, shall be furnished to support the signatures for driveway permit applications in the following areas:

- (A) All commercial driveway permit applications except those applications involving an existing access with no proposed change in access, use, or character.
- (B) Private driveway permit applications including field access approaches in areas along highways covered by limited access resolutions or on sections of state routes in the biennial highway improvement program.

All other allowable evidence will be at the discretion of the department.

If the applicant submits an application in which the title evidence does not include the signatures of all interest holders and if the application is evaluated in

favor of granting the permit, the applicant must submit subsequent title evidence showing that all omitted interest holders have ceased to be interest holders or have by an addendum to the application joined the original applicant on the original application, and such subsequent title evidence or addendum must be submitted before the permit is issued. (*Indiana Department of Transportation; Rule 6; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 142; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1706; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-6) to Indiana Department of Transportation (105 IAC 7-1-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 7-1-8 Statement of purpose and adjacent parcels**

**Authority:** IC 8-9.5-4-8; IC 8-13-1-6; IC 8-13-2-9  
**Affected:** IC 9-21-19

Sec. 8. APPLICATION-PURPOSE OF ACCESS DISCLOSURE OF INTENDED USE FOR OR WITH ADJACENT PARCELS. All applications for permits shall disclose the present and proposed use of the parcel for which access is requested. Any intended use of the access in conjunction with any adjacent parcel, whether owned by applicants or by others, or to be purchased or sold by the applicant or others, shall be disclosed in the application. All adjacent parcels owned or controlled by the applicants, whether intended to be used in conjunction with the requested access or nor shall be disclosed in the application. These disclosures are required to ensure the public a safe and convenient means of travel consistent with the right of the adjoining landowner to have access as provided by law. (*Indiana Department of Transportation; Rule 7; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 142; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-7) to Indiana Department of Transportation (105 IAC 7-1-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 7-1-9 Drawings and information required**

**Authority:** IC 9-21-19-2  
**Affected:** IC 8-9.5-4

Sec. 9. All applications for permits under these regulations shall be accompanied by clear drawings. One (1) set of drawings shall accompany all copies of the application form. Information to be shown on drawings shall include the following as applicable:

- (1) Driveway(s) and approach(es), including dimensions for width, length, angle of intersection, radii, and

any other measurement necessary to show the geometrics of the driveway(s) and approach(es) drawn to an engineers 20 or 30 scale.

(2) Rate of slope or grade of pavement for approach(es) and driveway(s).

(3) Type of approach and driveway pavement material (stone, concrete, or bituminous pavement including depths of lifts).

(4) Existing drainage patterns and structures, including size and kind.

(5) New drainage patterns, including the effect on downstream department facilities and private property, and structures including size, kind, invert pipe elevations, and inlet elevations.

(6) Width dimension of highway right-of-way.

(7) Width and type of highway pavement.

(8) Highway right-of-way and applicants property lines.

(9) Development site plan showing parking, interior drives, buildings, and other improvements, including distance from right-of-way line to gasoline pumps.

(10) Distance to intersecting roads, streets, railways, or crossovers within five hundred (500) feet in each direction on both sides of the highway from the applicants property lines drawn to an engineers 50 scale.

(11) The distance to and the design of all drives on both sides of highways and in each direction that are within five hundred (500) feet of applicants property lines drawn to an engineers 50 scale.

(12) The posted speed limit on highway and all traffic control equipment serving the highway, including but not limited to signalization devices, lighting, pavement markings, guardrail, and sign structures.

(13) Proposed treatment of right-of-way area adjacent to and between approaches.

(14) Appropriate symbols such as north arrow, direction of lane travel and direction of drainage flow, and a legend defining abbreviations and graphic representations of existing and new conditions, objects, materials, etc.

(15) A legal description of the property to be served by the permit together with a legal description of the adjoining land owned or controlled by the applicant.

(16) Traffic control needed during work activity displaying necessary signs, barricades, detour signs, and warning devices shall be provided whenever work is to interfere with normal traffic. Traffic control must be in accordance with the Construction and Maintenance Section of the Indiana Manual on Uniform Traffic Control Devices.

*(Indiana Department of Transportation; Rule 8; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 142; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1706; readopted filed*

*Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 2-1-8) to Indiana Department of Transportation (105 IAC 7-1-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 7-1-9.1 Developments; preliminary notification; when required**

**Authority:** IC 8-23-2-6; IC 9-21-19-2

**Affected:** IC 8-23-2-6

Sec. 9.1. An application for a permit for a development must be accompanied by a preliminary notification as provided under 105 IAC 7-1.5-2 if:

(1) the development meets the preliminary warrants for a traffic impact analysis study as provided under 105 IAC 7-1.5-1(a) unless the requirement is waived in writing by the department; or

(2) preliminary notification is required by the department under 105 IAC 7-1.5-1(b).

*(Indiana Department of Transportation; 105 IAC 7-1-9.1; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3359; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### **105 IAC 7-1-9.2 Developments; traffic studies; when required**

**Authority:** IC 8-23-2-6; IC 9-21-19-2

**Affected:** IC 8-23-2-6

Sec. 9.2. Permits for developments for which a preliminary notification is required under 105 IAC 7-1.5-1 will not be approved unless the requirements of 105 IAC 7-1.5 relating to traffic impact analysis and traffic operations analysis studies are met. *(Indiana Department of Transportation; 105 IAC 7-1-9.2; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3359; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### **105 IAC 7-1-10 Construction and materials standards**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 10. All construction and materials used within the highway right-of-way must conform to the current Indiana state highway "standard specifications" which shall be kept on file at the offices of the department. *(Indiana Department of Transportation; Rule 9; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 143; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1707; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 2-1-9) to Indiana Department of Transportation (105 IAC 7-1-10) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 7-1-11 Standards and design requirements****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 11. All applications shall be filed in accordance with the standards and design requirements of the department. The permittee shall agree to perform all work on the right-of-way in accordance with such standards and design requirements of the department. (*Indiana Department of Transportation; Rule 10; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 143; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1707; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Highways (120 IAC 2-1-10) to Indiana Department of Transportation (105 IAC 7-1-11) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 7-1-12 Commercial applications; attestation****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 12. All applications for commercial purposes shall be signed by a registered professional engineer, a registered architect, and/or registered land surveyor, attesting that the applications as proposed, conform with all department regulations, specifications and standards, except as shall be noted in such attestation. (*Indiana Department of Transportation; Rule 11; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 143; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1708; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Highways (120 IAC 2-1-11) to Indiana Department of Transportation (105 IAC 7-1-12) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 7-1-13 Land use and zoning approval****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 13. Approval of a permit application shall be subject to the permittee obtaining all necessary approvals involving land use from the zoning board plan commission, and/or local governmental authorities, and shall comply with all applicable laws. The issuance of any permit shall in no way imply department approval of, or be intended to influence any action pending before any local board, commission or agency. (*Indiana Department of Transportation; Rule 12; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 143; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1708; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Highways (120 IAC 2-1-12) to Indiana Department of Transportation (105 IAC 7-1-13) by P.L.112-1989,*

*SECTION 5, effective July 1, 1989.***105 IAC 7-1-14 Performance bonds****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 14. The department shall require a performance bond to be filed with each application for a commercial driveway showing the applicant as principal in a minimum amount of five thousand (\$5,000) dollars or in an amount as specifically set by appropriate department action. Such amount shall be increased in any application to equal the estimated cost of that part of the project on the department's right-of-way. The department may also require an adequate bond to be filed in any noncommercial application. Such bonds are required to insure compliance with all terms of the permit and shall in case of noncompliance, provide in addition to any damages suffered thereby, all witness and court costs in collecting the same, together with any attorney's fee reasonably due, and shall be released only when the work described on the permit has been completed to the satisfaction of the department. (*Indiana Department of Transportation; Rule 13; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 144; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1708; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Highways (120 IAC 2-1-13) to Indiana Department of Transportation (105 IAC 7-1-14) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 7-1-15 Crossovers****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 15. Permits for private or commercial crossovers will not be approved unless the applicant can prove to the satisfaction of the department that the location of the crossover will not be detrimental to the safety of the travelling public. The minimum recommended distance between crossovers is four hundred (400) feet. (*Indiana Department of Transportation; Rule 14; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 144; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1708; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) *NOTE: Transferred from Department of Highways (120 IAC 2-1-14) to Indiana Department of Transportation (105 IAC 7-1-15) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

**105 IAC 7-1-16 Adjacent tapers****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 16. Where the taper of a proposed driveway will

create hazardous and erratic traffic movements because of its proximity to an adjacent similar taper, the entire area between said tapers must be paved thus forming a continuous full lane between the approaches of which said tapers are a part. (*Indiana Department of Transportation; Rule 15; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 144; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1709; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-15) to Indiana Department of Transportation (105 IAC 7-1-16) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-17 Sight distances

Authority: IC 9-21-19-2  
Affected: IC 8-9.5-4

Sec. 17. All approaches shall be located so as to provide adequate sight distance in both directions along the highway for safe access to the highway without interfering with traffic. Under substandard visibility conditions as determined and set by the department, access may be granted for an alternate location that offers the least hazard and interference with traffic. (*Indiana Department of Transportation; Rule 16; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 144; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1709; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-16) to Indiana Department of Transportation (105 IAC 7-1-17) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-18 Interference with traffic control devices

Authority: IC 8-9.5-4-8; IC 8-13-1-6; IC 8-13-2-9  
Affected: IC 9-21-19

Sec. 18. LOCATION-TRAFFIC DEVICES. No entrance or approach shall be located or constructed so as to interfere with or prevent the proper location of necessary highway signs or other traffic control devices. (*Indiana Department of Transportation; Rule 17; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 144; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-17) to Indiana Department of Transportation (105 IAC 7-1-18) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-19 Drainage requirements

Authority: IC 9-21-19-2  
Affected: IC 8-9.5-4

Sec. 19. All improvements authorized by the permit

shall not interfere with drainage of the street or highway, nor cause additional area to drain onto the right-of-way unless specifically acknowledged and allowed by the permit, nor shall such improvements be constructed so as to cause drainage onto the roadway. (*Indiana Department of Transportation; Rule 19; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 145; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1709; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-19) to Indiana Department of Transportation (105 IAC 7-1-19) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-20 Authorization to proceed; objections

Authority: IC 8-9.5-4-8; IC 8-13-1-6; IC 8-13-2-9; IC 9-21-19-2  
Affected: IC 4-21.5

Sec. 20. Upon receipt of a permit issued by the department, the permittee is authorized to proceed with the work covered by the permit, subject to the conditions imposed by the department.

In accordance with the notice requirements of IC 4-22-1-25 [*Repealed by P.L.18-1986, SECTION 2. See IC 4-21.5.*], any objection to the conditions and provisions of an approved permit must be submitted in writing to the department within fifteen (15) days from the issue date of the permit.

The permit does not apply to any highway right-of-way that is closed for construction [*sic.*] purposes, except as allowed by provision in the permit, nor to any county roads or city streets. (*Indiana Department of Transportation; Rule 20; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 145; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1709; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-20) to Indiana Department of Transportation (105 IAC 7-1-20) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-21 Inspections; revocation of permit

Authority: IC 9-21-19-2  
Affected: IC 8-9.5-4

Sec. 21. An inspection may be conducted at any time by the department and a final inspection of the permit shall be conducted upon completion of construction. The work covered by the permit does not comply until found to be in accordance with the plans and specifications filed in the application as amended by the department, together with any special conditions noted therein, and approved by the department. The permittee shall adjust or stop operations upon direction of any police officer or authorized department employee. The permit may be

revoked at any time by the department for non-compliance with any and/or all provisions and conditions of said permit.

The permittee shall pay the department for any inspection costs, including labor, vehicular mileage [*sic.*], and equipment expenses when it is necessary to assign a department employee to inspect the work. The permittee shall immediately reimburse the department upon receipt of an itemized statement. (*Indiana Department of Transportation; Rule 21; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 145; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1710; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-21) to Indiana Department of Transportation (105 IAC 7-1-21) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 7-1-22 Noncompliance of permits without bonds**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 22. On permits not covered by a bond, work performed that is incomplete, improperly performed or otherwise does not follow the conditions or provisions of the permit shall be designated as "Does Not Comply". The department shall follow procedures for corrective action, beginning with the notice action stated in 120 IAC 2-2-4(2) [105 IAC 7-2-4(2)]. Permit applications for existing approaches that are denied by the department shall be corrected by entering the same procedure in 120 IAC 2-2-4(2) [105 IAC 7-2-4(2)]. (*Indiana Department of Transportation; 105 IAC 7-1-22; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1710; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-21.5) to Indiana Department of Transportation (105 IAC 7-1-22) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 7-1-23 "Limitation of access" instrument**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 23. The permittee shall sign a copy of a "limitation of access" instrument, if so required by the department as a condition of the permit. The department shall immediately cause said limitation of access instrument to be recorded in the appropriate county. (*Indiana Department of Transportation; Rule 22; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 145; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1710; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-22) to Indiana Department

of Transportation (105 IAC 7-1-23) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 7-1-24 Notice of start of construction**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 24. The permittee shall notify the department's sub-district office five (5) working days prior to the start of any work activity on the highway right-of-way, of the date such work will commence. The permittee shall notify the department's sub-district office prior to completion of all work on the highway right-of-way of the anticipated date such work will be complete. (*Indiana Department of Transportation; Rule 23; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 145; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1710; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-23) to Indiana Department of Transportation (105 IAC 7-1-24) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 7-1-25 Traffic control**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 25. The permittee shall erect and maintain all necessary traffic control signs, barricades, detour signs, and other traffic control devices required to safely direct traffic over or around the part of the highway where permitted operations are to be done in accordance with the construction and maintenance section of the Indiana manual on uniform traffic control devices. Disruption to traffic shall be kept to a minimum and shall require approval of the department prior to beginning other work activities on the right-of-way. (*Indiana Department of Transportation; 105 IAC 7-1-25; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1711; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-23.5) to Indiana Department of Transportation (105 IAC 7-1-25) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 7-1-26 Prohibited hours of work**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 26. The permitted work shall not be performed on the highway right-of-way between sunset and sunrise, unless specifically allowed by special provision to the permit. The permitted work shall not be performed on the highway right-of-way during the period beginning at 12:00 noon on the last weekday preceding and continuing until sunrise on the following: New Year's Day, Memo-

rial Day, Independence Day, Labor Day, Thanksgiving and Christmas. (*Indiana Department of Transportation; 105 IAC 7-1-26; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1711; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-23.6) to Indiana Department of Transportation (105 IAC 7-1-26) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 7-1-27 Display of permit**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 27. The permittee shall have the permit complete with drawings and special provisions on the job site at all times and will show said permit, on demand, to any police officer or department employee. (*Indiana Department of Transportation; Rule 24; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 145; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1711; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-24) to Indiana Department of Transportation (105 IAC 7-1-27) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 7-1-28 Term of permit; extension; cancellation**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 28. All work on highway right-of-way authorized by a permit must be completed within one (1) year after the permit is issued; otherwise, the permit will be cancelled unless an extension is requested, in writing, by the permittee, and is approved by the department. The time extension shall not exceed more than one (1) year beyond the original expiration date unless approved otherwise by the department. If a permit is cancelled, a new application must be submitted and approved before the proposed work can begin. Once construction authorized by the permit is initiated it must be completed within thirty (30) days, unless otherwise expressly approved as a special condition. (*Indiana Department of Transportation; Rule 25; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 145; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1711; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-25) to Indiana Department of Transportation (105 IAC 7-1-28) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 7-1-29 Liability during construction**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 29. The permittee shall assume all responsibility (during the time from the beginning of the work covered by any permit until final approval for the work) and shall furthermore be obligated to save harmless the state for any and all injury, loss or damage occasioned to or by persons or property resulting directly or indirectly from such work; the department shall, in its discretion, require the permittee to provide liability and indemnity insurance for the use and benefit of the state of Indiana. (*Indiana Department of Transportation; Rule 26; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 146; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1711; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-26) to Indiana Department of Transportation (105 IAC 7-1-29) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 7-1-30 Interference with structures on right-of-way**

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9.5-4

Sec. 30. The work authorized by the permit shall not interfere with any existing structure on any department right-of-way without specific permission in writing from the department or other owner thereof. Any structure or traffic control device affected by the proposed construction shall be relocated at the permittee's expense as directed. In the event that any buildings, railings, traffic control devices, or other structures are damaged, said cost of the removal and/or of repair due to damage shall be at the permittee's expense as directed. (*Indiana Department of Transportation; Rule 27; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 146; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1712; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-27) to Indiana Department of Transportation (105 IAC 7-1-30) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### **105 IAC 7-1-31 Encroachment by advertising signs**

**Authority:** IC 8-9.5-4-8; IC 8-13-1-6; IC 8-13-2-9

**Affected:** IC 9-21-19

Sec. 31. PERMIT-ENCROACHMENT OF UNLAWFUL SIGNS. The permittee shall not erect or maintain any advertising sign on or over the right-of-way or any portion thereof in violation of any law. (*Indiana Department of Transportation; Rule 28; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 146; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 2-1-28) to Indiana Department of Transportation (105 IAC 7-1-31) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-32 Change in existing access; subject to new rules

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9-5-4

Sec. 32. Any person, who by law, has an existing legal right of access to a state highway shall as a condition of the issuance of any permit and in consideration of the same, agree that such rights of access, then existing or granted thereafter with respect to such real estate are subject to 120 IAC 2-1 [this rule] as the same may from time to time be amended by the department. (*Indiana Department of Transportation; Rule 29; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 146; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1712; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Highways (120 IAC 2-1-29) to Indiana Department of Transportation (105 IAC 7-1-32) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 7-1-33 Severability of rule

**Authority:** IC 9-21-19-2

**Affected:** IC 8-9-5-4

Sec. 33. If any provision of 120 IAC 2-1 [this rule] or the application thereof to any person or circumstances is invalid, such invalidity shall not affect the other provisions or usage of 120 IAC 2-1 [this rule], which can be given effect without the invalid provision or usage, and to this end, the provisions of 120 IAC 2-1 [this rule] are declared to be severable. (*Indiana Department of Transportation; Rule 30; filed Nov 16, 1971, 9:45 a.m.: Rules and Regs. 1972, p. 146; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1712; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Highways (120 IAC 2-1-30) to Indiana Department of Transportation (105 IAC 7-1-33) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### Rule 1.5. Developments; Traffic Studies

105 IAC 7-1-1	Purpose of rule
105 IAC 7-1-2	Definitions
105 IAC 7-1-3	Classification of approaches
105 IAC 7-1-4	Types of permits; limited access, commercial and private driveways
105 IAC 7-1-5	Application for permit; form; fees
105 IAC 7-1-6	New application; when required
105 IAC 7-1-7	Parties to application; evidence of title
105 IAC 7-1-8	Statement of purpose and adjacent parcels
105 IAC 7-1-9	Drawings and information required
105 IAC 7-1-9.1	Developments; preliminary notification; when required
105 IAC 7-1-9.2	Developments; traffic studies; when required
105 IAC 7-1-10	Construction and materials standards
105 IAC 7-1-11	Standards and design requirements

105 IAC 7-1-12	Commercial applications; attestation
105 IAC 7-1-13	Land use and zoning approval
105 IAC 7-1-14	Performance bonds
105 IAC 7-1-15	Crossovers
105 IAC 7-1-16	Adjacent tapers
105 IAC 7-1-17	Sight distances
105 IAC 7-1-18	Interference with traffic control devices
105 IAC 7-1-19	Drainage requirements
105 IAC 7-1-20	Authorization to proceed; objections
105 IAC 7-1-21	Inspections; revocation of permit
105 IAC 7-1-22	Noncompliance of permits without bonds
105 IAC 7-1-23	"Limitation of access" instrument
105 IAC 7-1-24	Notice of start of construction
105 IAC 7-1-25	Traffic control
105 IAC 7-1-26	Prohibited hours of work
105 IAC 7-1-27	Display of permit
105 IAC 7-1-28	Term of permit; extension; cancellation
105 IAC 7-1-29	Liability during construction
105 IAC 7-1-30	Interference with structures on right-of-way
105 IAC 7-1-31	Encroachment by advertising signs
105 IAC 7-1-32	Change in existing access; subject to new rules
105 IAC 7-1-33	Severability of rule

### 105 IAC 7-1.5-1 Preliminary notification; warrants

**Authority:** IC 8-23-2-6; IC 9-21-19-2

**Affected:** IC 8-23-2-6

Sec. 1. (a) Unless waived in writing by the department, a preliminary notification shall be required to be submitted with the application for a permit for all developments that meet the following preliminary warrants for a traffic impact analysis study:

Land Use Type	Preliminary Warrants
Residential	150 dwelling units
Retail	15,000 square feet
Office	35,000 square feet or 3 acres
Industrial	70,000 square feet or 9 acres
Educational	30,000 square feet or 250 students
Lodging	120 occupied rooms
Medical	46,000 square feet

(b) At the discretion of the department, upon notice from the department after submission of the application for a permit, a preliminary notification may be required for the following types of developments:

- (1) Parking garages, banks, fast food restaurants, service stations with convenience stores, or similar developments considered by the department to warrant special consideration due to the pattern and volume of traffic generated and the existence of high vehicle trip generation rates.
- (2) Mixed-use developments that cannot easily be grouped or classified under the land use types provided in subsection (a) and generate more than fifty (50) vehicle trips in the peak direction within one (1) street peak hour.

*(Indiana Department of Transportation; 105 IAC 7-1.5-1; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3360; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

### **105 IAC 7-1.5-2 Preliminary notification; requirements**

**Authority:** IC 8-23-2-6; IC 9-21-19-2

**Affected:** IC 8-23-2-6

Sec. 2. In addition to the requirements of 105 IAC 7-1-9, an applicant required to provide preliminary notification under section 1 of this rule must provide an approximate description of existing and anticipated traffic conditions of the proposed development, including the following:

- (1) Type of development.
- (2) Preliminary site plan with site access points and the nearest signalized intersection in each direction.
- (3) A market study, if applicable.
- (4) Trip generation values and methods used to compute such values.
- (5) Any other information the applicant deems necessary or helpful to facilitate the initial meeting as provided under section 3 of this rule.

*(Indiana Department of Transportation; 105 IAC 7-1.5-2; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3360; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

### **105 IAC 7-1.5-3 Initial meeting**

**Authority:** IC 8-23-2-6; IC 9-21-19-2

**Affected:** IC 8-23-2-6

Sec. 3. (a) Upon submission of the application and preliminary notification, the applicant and the department shall schedule an initial meeting. The initial meeting shall be held no later than thirty (30) days after the submission of the application and preliminary notification that comply with the requirements of 105 IAC 7-1 and this rule.

(b) Participants at the initial meeting shall include the following:

- (1) The applicant or its representative.
- (2) One (1) or more of the following department personnel within the district in which the proposed development site is located:
  - (A) Regulations supervisor.
  - (B) Traffic engineer.
  - (C) Development engineer.
- (3) Any other individual deemed necessary by the applicant or department personnel to facilitate the initial meeting.

(c) The purpose of the initial meeting shall be to determine what further action, if any, is necessary by the applicant before a permit may be granted, including the following:

(1) Whether a traffic impact analysis study is warranted and, if so, the scope and extent of such study.

(2) Whether a traffic operations study is warranted and, if so, the scope and extent of such study.

(3) If the necessity for a traffic impact analysis study or a traffic operations analysis study cannot be determined, the information necessary from the applicant to make this determination.

(4) All other issues and requirements the applicant must address before the department may grant a permit.

(d) Within thirty (30) days of the initial meeting, a memorandum of understanding shall be prepared by the applicant or its representative detailing the actions to be performed by the applicant as determined at the initial meeting. The applicant may not proceed with any action until the department has approved in writing the memorandum of understanding. The memorandum of understanding shall include all pertinent issues discussed at the initial meeting and a description of any study to be conducted, including the following:

- (1) Issues to be addressed in the study.
- (2) Limits of study area.
- (3) Study assumptions.
- (4) Data sources.
- (5) Contents of any report to be generated.

*(Indiana Department of Transportation; 105 IAC 7-1.5-3; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3360; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

**105 IAC 7-1.5-4 Traffic impact analysis study; warrants**

**Authority:** IC 8-23-2-6; IC 9-21-19-2

**Affected:** IC 8-23-2-6

Sec. 4. (a) Unless waived by the department at the initial meeting or subsequent to the initial meeting, in writing, an applicant subject to this rule shall be required to conduct, at the applicant's expense, a traffic impact analysis study if one (1) or more of the following warrants are met:

- (1) Warrant 1, land use intensity, the development generates more than one hundred (100) vehicle trips in the peak direction within one (1) street peak hour.
- (2) Warrant 2, level-of-service, either:
  - (A) the traffic generated by the proposed development causes the level-of-service of the adjacent streets and intersections to drop to "C" or lower; or
  - (B) the nearby intersections currently operate at level-of-service "D" or lower.
- (3) Warrant 3, roadway modifications, the proposed development:
  - (A) is expected to significantly impact a roadway segment identified in the transportation improvement program; or

(B) includes modifications to the roadway system, such as:

- (i) the addition of lanes to accommodate site-generated traffic, exclusive turning lanes, acceleration/deceleration lanes, median openings; and
- (ii) the installation of traffic signals and other traffic control devices.

(4) Warrant 4, special cases, it is determined at the initial meeting or from a preliminary study that the traffic generated from the proposed development will create safety, operational, or other traffic problems.

(b) This section shall not be construed to limit the conditions by which the department may require a traffic impact analysis study. (*Indiana Department of Transportation; 105 IAC 7-1.5-4; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3361; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 7-1.5-5 Traffic operations analysis study; conditions requiring study**

**Authority:** IC 8-23-2-6; IC 9-21-19-2

**Affected:** IC 8-23-2-6

Sec. 5. (a) Unless waived by the department at the initial meeting or subsequent to the initial meeting, in writing, an applicant subject to this rule shall be required to conduct, at the applicant's expense, a traffic operations analysis study if one (1) or more of the following conditions are met:

- (1) The development generates enough turning movements into or out of the development that an auxiliary lane, such as an acceleration/deceleration lane, passing blister, or separate turn lane is required.
- (2) A request is made for a new or modified driveway near an intersection or interchange.
- (3) A request is made for a new or modified driveway near an intersection or interchange.
- (4) There exists a sight distance limitation or a high accident location near the site.
- (5) A request is made for median openings.

(b) This section shall not be construed to limit the conditions by which the department may require a traffic operations analysis study. (*Indiana Department of Transportation; 105 IAC 7-1.5-5; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3361; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 7-1.5-6 Traffic impact analysis and traffic operations analysis studies; qualifications of preparer; certification**

**Authority:** IC 8-23-2-6; IC 9-21-19-2

**Affected:** IC 8-23-2-6

Sec. 6. A traffic impact analysis or traffic operations analysis study required under this rule must be prepared by or under the supervision of a registered professional engineer with experience in traffic engineering operations who shall provide certification in the following or similar form:

"I certify that this Traffic Impact Analysis has been prepared by me or under my immediate supervision and that I have experience and training in the field of traffic and transportation engineering.

(signed)

John O. Smith, P.E.

Indiana Registration 12345".

(*Indiana Department of Transportation; 105 IAC 7-1.5-6; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3361; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 7-1.5-7 Review of traffic impact analysis and traffic operations analysis**

**Authority:** IC 8-23-2-6; IC 9-21-19-2

**Affected:** IC 8-23-2-6

Sec. 7. (a) Upon completion and submission of a traffic impact analysis or traffic operations analysis study required under this rule, the study shall be reviewed by the department. The review shall be conducted by department personnel trained and experienced in traffic impact and traffic operations study methodology, land use planning, and traffic engineering, safety, and operations.

(b) A formal review of the traffic impact analysis or traffic operations analysis study shall include the following findings:

- (1) Those analyses and conclusions that are acceptable.
- (2) Those analyses and conclusions that are not acceptable.
- (3) The acceptability of recommended site access provisions and roadway improvements.
- (4) A list of required improvements that might be considered to mitigate impacts of the development.

(c) Upon completion of the formal review, the department shall submit to the study preparer and the applicant its findings and either:

- (1) its acceptance of the study; or
- (2) a request for revisions clearly specifying the additional information required before the study may be accepted.

(d) The study preparer shall submit any additional report in response to a request for revisions in the form of an addendum to the original study unless a fully revised report is requested. (*Indiana Department of Transportation; 105 IAC 7-1.5-7; filed Jul 1, 1999, 11:00 a.m.: 22 IR 3361; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**Rule 2. Unauthorized Approaches to Driveways**

105 IAC 7-2-1	Purpose of rule
105 IAC 7-2-2	Documentation of approaches; corrective action required
105 IAC 7-2-3	Priority of corrective actions
105 IAC 7-2-4	Procedures for corrective action
105 IAC 7-2-5	Civil prosecution
105 IAC 7-2-6	Waiver of corrective action

**105 IAC 7-2-1 Purpose of rule****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 1. The Indiana department of highways shall control access and regulate work performed on approaches to driveways on highway right-of-way. This control and regulation shall provide for the preservation of the highway, and the safety and convenience of traffic on highway. The measure of public benefit shall be the guide in determining the priorities and procedures in correcting any unauthorized approaches to driveways. (*Indiana Department of Transportation; 105 IAC 7-2-1; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1712; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Highways (120 IAC 2-2-1) to Indiana Department of Transportation (105 IAC 7-2-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 7-2-2 Documentation of approaches; corrective action required****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 2. The department shall control access along highways through inspection and by properly documenting planned and existing approaches for driveways and pedestrian walkways. Any construction, reconstruction, alteration, or modification to an approach by person(s) other than the department shall be administered through 120 IAC 2 [this article], Permits. Existing approaches, which may be in either a complete or incomplete condition and that have not been reviewed and authorized by the department, shall be considered unauthorized, undocumented and subject to corrective action. Existing approaches which were originally authorized by the department but which have become substandard for any reason, such as a change in land use that adversely affects traffic patterns, shall also be considered unauthorized, undocumented and subject to corrective action.

The permit process shall be the normal means of taking corrective action. The property owner(s) and/or the person(s) responsible for an unauthorized approach shall make application for a written permit. All remedies available through the permit process shall be used to

obtain full compliance of work on the approach.

Under circumstances where the department is unable to obtain the cooperation of the property owner(s) and/or the person(s) responsible for an unauthorized approach through the permit process, corrective action will be taken in accordance with procedures contained in 120 IAC 2-2 [this rule]. (*Indiana Department of Transportation; 105 IAC 7-2-2; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1712; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Highways (120 IAC 2-2-2) to Indiana Department of Transportation (105 IAC 7-2-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 7-2-3 Priority of corrective actions****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 3. The department shall assign unauthorized approach work to its staff in accordance with manpower availability and shall first undertake corrective action for the more serious situations as determined by the department. (*Indiana Department of Transportation; 105 IAC 7-2-3; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1713; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Highways (120 IAC 2-2-3) to Indiana Department of Transportation (105 IAC 7-2-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 7-2-4 Procedures for corrective action****Authority:** IC 9-21-19-2**Affected:** IC 8-9.5-4

Sec. 4. Corrective action will normally be the construction, reconstruction, alteration or modification of the approach to standards acceptable to the department, or the complete removal of the approach and restoration of the highway right-of-way. The decision concerning the choice of a remedy remains with the department. The following procedure will be used by the department to obtain a suitable corrective result.

(1) The department will contact the responsible person(s) for the unauthorized approach, including the owner of real estate, and advise that they are to begin corrective action by preparing and submitting a permit application. The department shall state a specific date for receipt of the application, but in no case shall the time to submit the application be less than fifteen (15) calendar days from the date of contact. If an application is received within the specified time period, the department shall proceed to the requirements in 120 IAC 2-1 [105 IAC 7-1].

(2) If the person(s) responsible for the unauthorized approach has not responded within the specified time and if the application for the permit was not received by the department, a notice shall be given to the owner(s) of the real estate from which the unauthorized approach emanates by certified mail and shall be sent to the owner's last known address. A copy of the notice shall be sent to the occupancy [*sic.*] of the real estate and a copy of the notice shall be posted upon said real estate in a conspicuous place. The notice shall specify the time within which the owner(s) of the real estate shall have completed corrective action for the unauthorized approach, but in no case shall the period of time specified be less than thirty (30) calendar days.

(3) If the owner of the real estate has not completed corrective action on the unauthorized approach within the time specified by the notice, the department may do whatever in its discretion is necessary to correct the situation or may cause the same to be done by other persons, parties, or corporations.

(4) The cost of the corrective action to the unauthorized approach as provided by subdivision (3) in this section will be borne by the owner of the real estate. After the department has completed the corrective action, it shall bill the owner of the real estate for the cost.

*(Indiana Department of Transportation; 105 IAC 7-2-4; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1713; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 2-2-4) to Indiana Department of Transportation (105 IAC 7-2-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 7-2-5 Civil prosecution**

**Authority:** IC 9-21-19-2  
**Affected:** IC 8-9.5-4

Sec. 5. It shall be at the discretion of the department to pursue legal action against the person who fails to react to the requirements of 120 IAC 2-2-4(1) and (2) [*section 4(1) through 4(2) of this rule*]. (*Indiana Department of Transportation; 105 IAC 7-2-5; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1713; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 2-2-5) to Indiana Department of Transportation (105 IAC 7-2-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 7-2-6 Waiver of corrective action**

**Authority:** IC 9-21-19-2  
**Affected:** IC 8-9.5-4

Sec. 6. Where unauthorized approaches extending over

any highway right-of-way are in place on the effective date of this regulation, it shall be the right of the department to exercise discretion in implementing the procedure stated in 120 IAC 2-2-4 [*section 4 of this rule*]. (*Indiana Department of Transportation; 105 IAC 7-2-6; filed Aug 2, 1985, 3:39 p.m.: 8 IR 1713; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 2-2-6) to Indiana Department of Transportation (105 IAC 7-2-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **Rule 3. Signs and Billboards**

- 105 IAC 7-3-1 Permit required for each sign structure; applications; refusal of permits; change of advertising copy; revocation
- 105 IAC 7-3-2 Preconstruction permit
- 105 IAC 7-3-3 Application and fee
- 105 IAC 7-3-4 Permit identification number for signs; fastening to signs
- 105 IAC 7-3-5 Territory to which article applies; entries for examinations and surveys
- 105 IAC 7-3-6 Permit denial criteria
- 105 IAC 7-3-7 Conditional permit
- 105 IAC 7-3-8 Subsequent failure to comply with rule
- 105 IAC 7-3-9 Size and configuration criteria
- 105 IAC 7-3-10 Sign structure spacing criteria
- 105 IAC 7-3-11 Sign lighting criteria
- 105 IAC 7-3-12 Miscellaneous criteria
- 105 IAC 7-3-13 Separability

### **105 IAC 7-3-1 Permit required for each sign structure; applications; refusal of permits; change of advertising copy; revocation**

**Authority:** IC 8-23-2-6; IC 8-23-20-25  
**Affected:** IC 4-21.5; IC 8-23-20

Sec. 1. (a) Except as otherwise provided in this rule, no person shall construct, maintain, erect, cause or allow to be constructed or erected any advertising sign, display, or device without first obtaining a permit therefor from the department and paying applicable fees as established in section 3 of this rule.

(b) A separate application for a permit shall be made for each sign structure or proposed sign structure on a form furnished by the department. The application shall be signed by the applicant, or a representative duly authorized in writing to act for the applicant, and shall describe and set forth the size, shape, and the nature of the proposed sign structure and its actual or proposed location with sufficient accuracy to enable the department to locate and identify it. The denial of a permit by the department shall be accompanied by an order served on the applicant by certified mail, return receipt requested. Such order shall include a clear statement of the

rationale upon which the denial was based. If the permit is denied, the person applying for the permit shall be afforded the opportunity to request a hearing under to [sic.] IC 4-21.5 and IC 8-23-20. The application shall contain a certification of truthfulness, under penalties of perjury for all information contained therein.

(c) The holder of a permit or its authorized agent shall have the right to change the advertising copy on the structure or sign for which it was issued without payment of any additional fee.

(d) The department shall have authority, after thirty (30) days notice in writing to the permittee, to enter an order revoking any permit issued under this rule in any case where the application for the permit contains false or misleading information or where the permittee has violated any of the provisions of this rule.

(e) The issuance of the permit shall in no way imply department approval of or be intended to influence any action pending before a local board, commission, or agency.

(f) The department may subsequently refuse to issue a permit to an applicant that is found to have intentionally provided false information on a previous permit application within the previous two (2) years. (*Indiana Department of Transportation; 105 IAC 7-3-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2042; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 7-3-2 Preconstruction permit**

**Authority:** IC 8-23-2-6; IC 8-23-20-25  
**Affected:** IC 8-23-20

Sec. 2. (a) A permit must be obtained before the erection of any sign structure.

(b) As soon as practicable and no more than thirty (30) days after the issuance of a permit for a proposed structure, the permit tag shall be displayed upon a post or similar support such that the permit number is plainly visible from the right-of-way. Such tag shall be placed as close as practical at the right-of-way line at the nearest point to the proposed location.

(c) Measurements to determine the compliance of a subsequent sign structure to the spacing criteria shall treat the permit tag display described in subsection (b) as if a sign structure was actually in existence on the date the permit was issued.

(d) The proposed sign structure must be completed within three hundred sixty-five (365) days of issuance of the permit or the permit shall be revoked.

(e) When multiple permit applications are received for proposed sign structures, priority shall be given in the order received.

(f) When a spacing or related conflict exists between a sign structure constructed on or after July 1, 1993, and

not holding a valid permit, and a proposed sign structure, the first permit application received shall have priority in the issuance of a permit. (*Indiana Department of Transportation; 105 IAC 7-3-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2042; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 7-3-3 Application and fee**

**Authority:** IC 8-23-2-6; IC 8-23-20-25  
**Affected:** IC 8-23-20-25

Sec. 3. Each application for a permit (for sign structures not subject to registration and permit under IC 8-23-20-25(h)) shall be accompanied by an application fee of twenty-five dollars (\$25) for each sign structure. The fee shall be retained by the department. If the application is approved, the applicant shall be billed for an additional seventy-five dollars (\$75) permit fee. Once the permit fee has been received by the department, the permit tag and approved permit application will be forwarded by U. S. mail. (*Indiana Department of Transportation; 105 IAC 7-3-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2042; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 7-3-4 Permit identification number for signs; fastening to signs**

**Authority:** IC 8-23-2-6; IC 8-23-20-25  
**Affected:** IC 8-23-20

Sec. 4. Each permit issued by the department shall be assigned a separate identification number, and it shall be the duty of each permittee to fasten to each sign structure the permit tag provided by the department in a prominent location with the permit number plainly visible from the right-of-way. The construction, erection, operation, use, or maintenance of an outdoor advertising sign structure without having affixed the proper permit tag shall be prima facie evidence that no permit has been obtained. In the event the provided permit tag is lost or destroyed, a new permit tag shall be obtained from the department upon the submission of a written request and the payment of a ten dollar (\$10) replacement fee. The replacement tag shall be fastened to the structure as provided in this section. (*Indiana Department of Transportation; 105 IAC 7-3-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2043; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 7-3-5 Territory to which article applies; entries for examinations and surveys**

**Authority:** IC 8-23-2-6; IC 8-23-20-25  
**Affected:** IC 8-23-20

Sec. 5. (a) The territory under the jurisdiction of the

department for the purposes of this article shall include all interstates and the Federal-Aid Primary System as defined on June 1, 1991, and any other highways where control of outdoor advertising is required by 23 U.S.C. 131 in effect on December 18, 1991. Where additional roadways become subject to the requirements of 23 U.S.C. 131, as effective on December 18, 1991, such are deemed added to the control areas contained in subsection (c), sixty (60) days after publishing notice of the additions in the Indiana Register. In the event an additional roadway is added, sign owners shall have one hundred and eighty (180) days after the date of publication to comply with this rule.

(b) The submission of a permit application is deemed permission to enter into and upon any land which advertising signs are standing or proposed, or upon which displays or devices are exhibited and make such examinations and surveys as may be relevant and reasonable under this rule.

(c) List of control areas:

I-64	all	S.R. 13	from the Michigan state line to I-80/I-90
I-65	all	S.R. 14	from U.S. 421 to S.R. 114
I-69	all	S.R. 15	from U.S. 33 to S.R. 15/S.R. 9 north intersection
I-70	all	S.R. 18	from S.R. 18/U.S. 421/S.R. 39 intersection to S.R. 29
I-74	all	S.R. 18	from S.R. 18/S.R. 19 intersection to the Ohio state line
I-80	all	S.R. 19	from U.S. 24 to S.R. 18
I-90	all	S.R. 19	from the Michigan state line to U.S. 6
I-94	all	U.S. 20	all
I-164	all	S.R. 22	from S.R. 29 to I-69
I-265	all	S.R. 23	from U.S. 6 to U.S. 31
I-275	all	U.S. 24	from the Illinois state line to S.R. 329 right/S.R. 17 left intersection
I-465	all	U.S. 24	from U.S. 31 north Jct. to east Jct. of U.S. 30
S.R. 1	from S.R. 469 south Jct. to S.R. 18	U.S. 24	from S.R. 469 to the Ohio state line
S.R. 1	from U.S. 35 to S.R. 1/U.S. 52 south intersection	S.R. 25	from S.R. 28 to S.R. 526
S.R. 1	from I-74 to U.S. 50	S.R. 25	from I-65 to U.S. 24
S.R. 2	from U.S. 41 to U.S. 231	S.R. 25	from S.R. 17 to S.R. 14
S.R. 2	from U.S. 30 east Jct. to U.S. 31	S.R. 26	from the Illinois state line to U.S. 41
S.R. 3	from U.S. 6 to I-69	U.S. 27	from I-69 to the Ohio state line
S.R. 3	from S.R. 18 to the Kentucky state line	S.R. 28	from the Illinois state line to S.R. 28/S.R. 67/S.R. 167 intersection
U.S. 6	all	S.R. 29	from U.S. 35 to S.R. 28/U.S. 421 intersection
S.R. 7	from S.R. 46 to S.R. 56	U.S. 30	all
S.R. 8	from U.S. 231 to U.S. 41	U.S. 31	from the Michigan state line to I-465 on south side of Indianapolis
S.R. 9	from the Michigan state line to S.R. 9/S.R. 109 intersection in Madison County	S.R. 32	from U.S. 231 to S.R. 109
S.R. 9	from I-69 to S.R. 46	S.R. 32	from S.R. 3 to the Ohio state line
S.R. 10	from the Illinois state line to U.S. 421	U.S. 33	from U.S. 33/S.R. 23/U.S. 20 intersection to the Ohio state line
U.S. 12	from the Michigan state line to S.R. 212	U.S. 35	from S.R. 39 to the north junction of the intersection of S.R. 29
		U.S. 35	from S.R. 435 to I-70
		U.S. 36	from the Illinois state line to I-465 on the west side of Indianapolis
		U.S. 36	from I-465 on the east side of Indianapolis to S.R. 38
		U.S. 36	from U.S. 27 to the Ohio state line
		S.R. 37	from I-465 on the south side of Indianapolis to I-64
		S.R. 37	from I-64 to S.R. 66
		S.R. 37	from S.R. 9 to U.S. 31
		S.R. 39	from the Michigan state line to Jct. of S.R. 39 and S.R. 2
		S.R. 39	between S.R. 67 and S.R. 37

S.R. 39 from U.S. 24 to S.R. 32  
 U.S. 41 all  
 S.R. 43 from west Jct. of S.R. 43/S.R. 46/S.R. 67 to S.R. 43/S.R. 25/U.S. 231 intersection  
 S.R. 43 from I-65 to U.S. 24/U.S. 421 Jct.  
 S.R. 44 from S.R. 135 (Johnson County) to U.S. 27  
 S.R. 45 from S.R. 445 to S.R. 37  
 S.R. 46 from S.R. 59 to the eastern junction with S.R. 3  
 S.R. 47 from U.S. 41 to S.R. 32  
 S.R. 49 from U.S. 12 to U.S. 30  
 U.S. 50 all  
 U.S. 52 from the Illinois state line to S.R. 443  
 U.S. 52 from I-465 on the east side of Indianapolis to I-74  
 S.R. 54 from U.S. 41/U.S. 150 to S.R. 43  
 S.R. 56 from S.R. 61/S.R. 57 south intersection to U.S. 50/S.R. 350 (Dearborn County)  
 S.R. 57 from S.R. 54 to U.S. 41  
 S.R. 58 from U.S. 231 to S.R. 37  
 S.R. 59 from U.S. 36 to S.R. 54/S.R. 59 south Jct.  
 S.R. 60 from S.R. 37 to I-65  
 S.R. 61 from U.S. 41 to S.R. 56/S.R. 57 intersection  
 S.R. 61 from I-64 to S.R. 66  
 S.R. 62 from the Illinois state line to S.R. 62/U.S. 231 north split  
 S.R. 62 from S.R. 56 to I-65  
 S.R. 63 from U.S. 41 north Jct. to U.S. 41 south Jct.  
 S.R. 64 from the Illinois state line to U.S. 231  
 S.R. 66 from the Illinois state line to U.S. 41  
 S.R. 66 from U.S. 41 to S.R. 37  
 S.R. 67 from I-465 on the east side of Indianapolis to U.S. 27  
 S.R. 67 from I-465 on the southwest side of Indianapolis to U.S. 41  
 S.R. 69 from I-64 to S.R. 62  
 S.R. 101 from S.R. 44 to U.S. 52  
 S.R. 101 from I-74 to U.S. 50  
 S.R. 109 from S.R. 9 to I-70  
 S.R. 114 from U.S. 41 to U.S. 421  
 S.R. 114 from S.R. 14 to U.S. 24  
 S.R. 135 from S.R. 44 to the Kentucky state line  
 S.R. 144 from S.R. 42 to S.R. 67  
 S.R. 145 from S.R. 56 to I-64  
 U.S. 150 from the Illinois state line to I-70  
 U.S. 150 from U.S. 50 to I-64  
 S.R. 154 from the Illinois state line to U.S. 41

S.R. 212 all  
 U.S. 224 from U.S. 24 to the Ohio state line  
 U.S. 231 from S.R. 2 to S.R. 8  
 U.S. 231 from U.S. 231/S.R. 10 east junction to U.S. 231/S.R. 10 west junction  
 U.S. 231 from the S.R. 25 south junction to the Kentucky state line  
 S.R. 237 from S.R. 37 to S.R. 66  
 S.R. 252 from S.R. 37 to S.R. 135  
 S.R. 267 from I-65 to S.R. 144/S.R. 42 intersection  
 U.S. 421 all except I-74 to S.R. 46 in Decatur County  
 S.R. 441 all  
 S.R. 445 all  
 S.R. 469 all  
 S.R. 526 all  
 S.R. 912 all  
*(Indiana Department of Transportation; 105 IAC 7-3-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2043; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### 105 IAC 7-3-6 Permit denial criteria

**Authority:** IC 8-23-2-6; IC 8-23-20-25

**Affected:** IC 8-23-20

Sec. 6. No permit, except as provided in section 7 of this rule, may be issued for any sign structure:

- (1) Within six hundred sixty (660) feet of the right-of-way of a roadway, erected after January 1, 1968, except in zoned or unzoned commercial or industrial areas.
- (2) Beyond six hundred sixty (660) feet of the right-of-way, outside of urban areas, visible from the right-of-way, and erected with the purpose of a message being read from the traveled portion, and erected after June 30, 1976.
- (3) In an adjacent area where the sign fails to comply with the size and configuration restrictions in section 9 of this rule.
- (4) In an adjacent area where the sign fails to comply with the sign spacing criteria in section 10 of this rule.
- (5) In an adjacent area where the sign fails to comply with the sign lighting criteria in section 11 of this rule.
- (6) That fails to comply with the miscellaneous sign criteria in section 12 of this rule.

*(Indiana Department of Transportation; 105 IAC 7-3-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2044; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### 105 IAC 7-3-7 Conditional permit

**Authority:** IC 8-23-2-6; IC 8-23-20-25

**Affected:** IC 8-23-20

Sec. 7. A conditional permit shall be granted to any sign lawfully erected that is not eligible for a permit under section 6 of this rule, provided the following:

(1) The sign must remain substantially the same as it was on the date that its status initially became nonconforming. Reasonable maintenance and repair shall not be considered to have substantially altered the sign.

(2) The sign has not been destroyed, abandoned, or discontinued. If reerected in kind, signs destroyed due to vandalism, criminal acts, or tortious acts shall not be considered destroyed.

*(Indiana Department of Transportation; 105 IAC 7-3-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2044; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### **105 IAC 7-3-8 Subsequent failure to comply with rule**

**Authority:** IC 8-23-2-6; IC 8-23-20-25

**Affected:** IC 4-21.5; IC 8-23-20

Sec. 8. (a) A sign structure issued a permit under this rule may have such permit revoked if the department determines the following:

(1) The sign structure is no longer in compliance with:

(A) The size and configuration restrictions in section 9 of this rule.

(B) The sign structure spacing criteria in section 10 of this rule.

(C) The sign lighting criteria in section 11 of this rule.

(D) The miscellaneous sign criteria in section 12 of this rule.

(2) If permit revocation under subsection (a) [*sic.*, *this subsection*] is appropriate, the department shall issue a written order clearly explaining the rationale to the permit holder. The permit holder shall be allowed thirty (30) days to remedy the noncompliance or appeal the determination under IC 4-21.5.

If the determination under this subsection is not appealed or remedied within the thirty (30) days allowed, the permit shall be revoked.

(b) A sign structure issued a permit under this rule may have such permit modified to a conditional permit if the department determines that changed circumstances would preclude the issuance of a permit under section 6 of this rule. Notice shall be given as provided in subsection (a). If the permit is modified to a conditional permit, the requirements of section 7 of this rule apply. *(Indiana Department of Transportation; 105 IAC 7-3-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2044; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### **105 IAC 7-3-9 Size and configuration criteria**

**Authority:** IC 8-23-2-6; IC 8-23-20-25

**Affected:** IC 8-23-20

Sec. 9. (a) The maximum area for any sign erected after October 4, 1971, shall be one thousand (1,000) square feet and the maximum height of twenty-five (25) feet and maximum length of sixty (60) feet, exclusive of any border, trim, ornamental base, apron, supports, embellishments, and other structural members, if the exclusions do not exceed twenty percent (20%) of the sign area.

(b) The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the area affected.

(c) A sign structure may display one (1) or two (2) advertisements per facing, not to exceed the maximum area as defined in subsection (a).

(d) Double-faced structures will be allowed with the maximum area being permissible for each facing. *(Indiana Department of Transportation; 105 IAC 7-3-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2045; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

#### **105 IAC 7-3-10 Sign structure spacing criteria**

**Authority:** IC 8-23-2-6; IC 8-23-20-25

**Affected:** IC 8-23-20

Sec. 10. (a) All signs erected after October 4, 1971, in adjacent areas must conform to the following criteria:

(1) On the interstate system and limited access facilities on the Federal-Aid Primary System, the following:

(A) No sign structure shall be erected within five hundred (500) feet of another structure on the same side of the highway.

(B) Outside incorporated municipalities, no structure may be located adjacent to or within five hundred (500) feet of an interchange, intersection at grade, or rest area, said five hundred (500) feet to be measured along the interstate or limited access primary highway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(2) On other routes on the Federal-Aid Primary System, the following:

(A) Outside of incorporated municipalities, no sign structure shall be erected within three hundred (300) feet of another sign structure on the same side of the highway.

(B) Inside incorporated municipalities, no sign structure shall be erected within one hundred (100) feet of another sign structure on the same side of the highway.

(b) The spacing-between-sign structure rules in subsection (a)(2) shall not apply to sign structures separated by a building or other obstruction in such a manner that only one (1) sign structure is visible from any point on the highway at any one (1) time.

(c) Official and on premise signs shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

(d) The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway. (*Indiana Department of Transportation; 105 IAC 7-3-10; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2045; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 7-3-11 Sign lighting criteria**

**Authority:** IC 8-23-2-6; IC 8-23-20-25

**Affected:** IC 8-23-20

Sec. 11. This section applies to signs located within adjacent areas. Signs may be illuminated, subject to this rule and the following restrictions:

(1) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(2) Signs which are not effectively shielded to prevent beams or rays of light from being directed at any portion of the traveled ways of highways in the control areas, and which:

(A) are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle; or

(B) otherwise interfere with any driver's operation of a motor vehicle;  
are prohibited.

(3) No sign shall be so illuminated as to obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(*Indiana Department of Transportation; 105 IAC 7-3-11; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2045; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 7-3-12 Miscellaneous criteria**

**Authority:** IC 8-23-2-6; IC 8-23-20-25

**Affected:** IC 8-23-20

Sec. 12. The following signs shall not be eligible for a permit:

- (1) Signs which are illegal under state laws or rules.
- (2) Signs not securely affixed to a substantial structure.
- (3) Signs which attempt or appear to attempt to regulate, warn, or direct the movement of traffic or which

interfere with, imitate, or resemble any official traffic sign, signal, or device.

(4) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(5) Signs otherwise inconsistent with:

(A) 23 U.S.C. 131, as effective December 18, 1991;

(B) 23 CFR 750;

(C) IC 8-23-20; or

(D) this rule.

(*Indiana Department of Transportation; 105 IAC 7-3-12; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2046; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 7-3-13 Separability**

**Authority:** IC 8-23-2-6; IC 8-23-20-25

**Affected:** IC 8-23-20

Sec. 13. The terms of this rule are declared to be separable. Should any word, phrase, sentence, or section be declared unconstitutional or otherwise invalid, the remainder of this article shall not thereby be affected, but shall remain in full force and effect. (*Indiana Department of Transportation; 105 IAC 7-3-13; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2046; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **ARTICLE 8. PREQUALIFICATION OF CONTRACTORS AND BIDDING FOR HIGHWAYS (REPEALED)**

(*Repealed by Indiana Department of Transportation; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2198*)

### **ARTICLE 9. TRAFFIC CONTROL DEVICES FOR HIGHWAYS**

*NOTE: Department of Highways was transferred to Indiana Department of Transportation. Whenever in any promulgated rule text there appears a reference to Department of Highways, substitute Indiana Department of Transportation.*

Rule 1. Interstate Highway Systems

Rule 2. Uniform Traffic Control Devices

Rule 3. Buses; Vehicle Width

Rule 4. Business Signs on Information Panels Within Highway Rights-of-Way

#### **Rule 1. Interstate Highway Systems**

105 IAC 9-1-1 Stopping, standing, or parking prohibited on interstate highways

105 IAC 9-1-2 Pedestrians and certain vehicles prohibited on interstate highways

#### **105 IAC 9-1-1 Stopping, standing, or parking prohibited on interstate highways**

**Authority:** IC 8-9-5-4-8; IC 8-13-1-6

**Affected:** IC 9-21-8; IC 9-21-16

Sec. 1. Stopping, standing or parking shall be prohibited on the following enumerated highways: I-64, I-65, I-69, I-70, I-74, I-80, I-90, I-94, I-164, I-165, I-265 and I-465, otherwise known as the "Interstate Highway System", including ramp connections, except in designated "Rest Areas". (*Indiana Department of Transportation; Rule 100-78; filed Jan 29, 1979, 3:11 p.m.: 2 IR 296; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)  
 NOTE: Transferred from Department of Highways (120 IAC 4-2-1) to Indiana Department of Transportation (105 IAC 9-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 9-1-2 Pedestrians and certain vehicles prohibited on interstate highways

Authority: IC 8-9.5-4-8; IC 8-13-1-6  
 Affected: IC 9-21-8; IC 9-21-16

Sec. 2. Pedestrians, motorized bicycles, bicycles, and other non-motorized traffic shall be prohibited from the following enumerated highways: I-64, I-65, I-69, I-70, I-74, I-80, I-90, I-94, I-164, I-165, I-265, I-275 and I-465, otherwise known as the "Interstate Highway System". (*Indiana Department of Transportation; Rule 101-78; filed Jan 29, 1979, 3:11 p.m.: 2 IR 296; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)  
 NOTE: Transferred from Department of Highways (120 IAC 4-2-2) to Indiana Department of Transportation (105 IAC 9-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### Rule 2. Uniform Traffic Control Devices

- 105 IAC 9-2-1 Manual on uniform traffic control devices adopted  
 105 IAC 9-2-2 Modification to the 1988 Edition of the Manual on Uniform Traffic Control Devices

### 105 IAC 9-2-1 Manual on uniform traffic control devices adopted

Authority: IC 9-21-4-1  
 Affected: IC 4-22-2

Sec. 1. Subsequent to publication of notice and public hearing having been held on January 27, 1987, as required by the provisions of IC 4-22-2 et. seq., the Indiana Department of Highways hereby adopts the 1988 Edition of the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways. (*Indiana Department of Transportation; 105 IAC 9-2-1; filed Sep 28, 1981, 2:30 p.m.: 4 IR 2216, eff Jul 1, 1982; errata, 4 IR 2984; filed Apr 23, 1987, 2:15 p.m.: 10 IR 1850, eff Jan 1, 1988; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)  
 NOTE: Transferred from Department of Highways (120 IAC 4-3-1) to Indiana Department of Transportation

(105 IAC 9-2-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 9-2-2 Modification to the 1988 Edition of the Manual on Uniform Traffic Control Devices

Authority: IC 8-23-2-6; IC 9-21-2-1  
 Affected: IC 4-22-2; IC 9-21-4-1; IC 9-22-2

Sec. 2. Subsequent to publication of notice and public hearing held on January 31, 1995, as required by IC 4-22-2 et seq., the Indiana department of transportation hereby adopts the following amendment to the 1988 Edition of the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways:

2B-21 DO NOT PASS SIGN (R4-1)

The DO NOT PASS sign may be used on two and three-lane roads at the beginning of a zone through which restricted sight distance or other hazardous conditions make overtaking and passing dangerous. The sign may also be used to prohibit passing on one-way multi-lane roadways where the geometrics involve a lane reduction. Additional signs, as needed, may be placed at intervals within the zone. Because a driver about to pass a vehicle ahead often has only a restricted view to the right, an additional sign, the pennant NO PASSING ZONE sign (W14-3) on the left hand side of the road may be desirable.

Standard pavement markings, as described in Part III of this manual, shall be considered the controlling regulatory marking device. The signs, when used, are considered supplementary to the lines. (*Indiana Department of Transportation; 105 IAC 9-2-2; filed Apr 10, 1995, 10:00 a.m.: 18 IR 1994; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### Rule 3. Buses; Vehicle Width

- 105 IAC 9-3-1 Buses; vehicle width

### 105 IAC 9-3-1 Buses; vehicle width

Authority: IC 9-20-8-1  
 Affected: IC 9-20-8-2; IC 9-29-6-1

Sec. 1. Any motor vehicle designed and used for the carrying of more than seven (7) persons, including passenger buses, and having a total outside width not exceeding eight (8) feet six (6) inches, exclusive of safety equipment, may be operated upon any public highway having a lane width of twelve (12) feet or more. (*Indiana Department of Transportation; 105 IAC 9-3-1; filed Jun 2, 1982, 10:12 a.m.: 5 IR 1301; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)  
 NOTE: Transferred from Department of Highways (120 IAC 4-4-1) to Indiana Department of Transportation (105 IAC 9-3-1)

by P.L.112-1989, SECTION 5, effective July 1, 1989.

**Rule 4. Business Signs on Information Panels  
Within Highway Rights-of-Way**

105 IAC 9-4-1	Purpose of rule
105 IAC 9-4-2	Authority ( <i>Repealed</i> )
105 IAC 9-4-3	Applicability
105 IAC 9-4-4	Definitions
105 IAC 9-4-5	Costs; rental fee
105 IAC 9-4-6	Installation of panels; violations
105 IAC 9-4-7	Location of specific service signs; general requirements
105 IAC 9-4-8	Specific information permitted
105 IAC 9-4-9	Size and design; composition; general specifications
105 IAC 9-4-10	Location of signs; special requirements
105 IAC 9-4-11	Design; special requirements
105 IAC 9-4-12	Size; special requirements
105 IAC 9-4-13	Qualification for logo panels

**105 IAC 9-4-1 Purpose of rule**

**Authority:** IC 8-23-2-6

**Affected:** IC 9-21-2; IC 9-21-4-5

Sec. 1. The purpose of this rule is to establish standards, criteria, and procedures for signs erected within highway rights-of-way to provide directional information for business establishments offering goods and services in the interest of the traveling public. (*Indiana Department of Transportation; 105 IAC 9-4-1; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2326; filed Jan 8, 1992, 12:00 p.m.: 15 IR 698; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Highways (120 IAC 4-5-1) to Indiana Department of Transportation (105 IAC 9-4-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 9-4-2 Authority (*Repealed*)**

Sec. 2. (*Repealed by Indiana Department of Transportation; filed Jan 8, 1992, 12:00 p.m.: 15 IR 700*)

**105 IAC 9-4-3 Applicability**

**Authority:** IC 8-23-2-6

**Affected:** IC 9-21-2; IC 9-21-4-5

Sec. 3. The provisions of this rule are applicable to the interstate system of highways and other freeways only. (*Indiana Department of Transportation; 105 IAC 9-4-3; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2326; filed Jan 8, 1992, 12:00 p.m.: 15 IR 698; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) **NOTE:** Transferred from Department of Highways (120 IAC 4-5-3) to Indiana Department of Transportation (105 IAC 9-4-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

**105 IAC 9-4-4 Definitions**

**Authority:** IC 8-23-2-6

**Affected:** IC 9-21-4-5

Sec. 4. As used in this rule:

- (1) "Business facility" means a business operating in one (1) or more of the areas of service permitted for installation of specific service signs and meeting the criteria for installation of a logo panel.
- (2) "CLOSED panel" is a panel imprinted with the word CLOSED that may be installed over a logo panel to indicate the seasonal closing of a business.
- (3) "Contractor" means the individual, partnership, firm, corporation, or combination of same contracting with the department for performance of prescribed work.
- (4) "Department" means the Indiana department of transportation.
- (5) "Freeway" means a divided highway for through traffic with full control of access.
- (6) "Full control of access" means the condition where the right of owners or occupants of abutting land or other persons, to access light, air, or view in connection with a highway is fully controlled. Full control is exercised to give preference to through traffic by providing access connections only with selected public roads and by prohibiting crossings at grade or direct private driveway connections.
- (7) "Interstate system" means the federally designated system of interstate highways with full control of access.
- (8) "Logo panel" is a business sign and means a separately attached sign mounted on specific service signs to show the brand, symbol, trademark, or name, or combination of these, for a motorist service available at or near an interchange.
- (9) "Miniature logo panel" means a reduced size duplicate of the logo panel installed on the specific service sign in advance of the interchange which is installed on the specific service ramp sign.
- (10) "Primary applicant" means a business facility requesting a logo panel which meets the highest standard for the specific service.
- (11) "Secondary applicant" means a business facility requesting a logo panel which meets a reduced standard for the specific service. Contracts for secondary applicants may be for a shorter period than for primary applicants.
- (12) "Specific service sign" is a specific information panel and means a rectangular sign panel with the following:
  - (A) The words "GAS", "FOOD", "LODGING", "CAMPING", or "ATTRACTION".

(B) Directional information.

(C) One (1) or more logo panels.

(13) "Specific service ramp sign" means a reduced size specific service sign installed on an interchange ramp to indicate distance and direction to a service facility not readily visible from the ramp intersection with the intersecting roadway.

*(Indiana Department of Transportation; 105 IAC 9-4-4; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2326; filed Mar 2, 1988, 10:55 a.m.: 11 IR 2330; filed Jan 8, 1992, 12:00 p.m.: 15 IR 698; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2438) NOTE: Transferred from Department of Highways (120 IAC 4-5-4) to Indiana Department of Transportation (105 IAC 9-4-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 9-4-5 Costs; rental fee**

**Authority:** IC 8-23-2-6

**Affected:** IC 9-21-4-5

Sec. 5. (a) The business facility or the department's contractor shall bear all costs of manufacturing, installation, and maintenance relating to their respective logo panel and miniature logo panel, including theft, vandalism, or damage for any reason.

(b) The business facility shall pay a rental fee to the department or its authorized contractor.

(c) Business facilities which operate on a seasonal basis shall pay a fee for installation and subsequent removal of CLOSED panels or removal and reinstallation of logo panels.

(d) Fees will be established or approved jointly by the department and the Indiana department of commerce. *(Indiana Department of Transportation; 105 IAC 9-4-5; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2326; errata, 7 IR 2546; filed Mar 2, 1988, 10:55 a.m.: 11 IR 2331; filed Jan 8, 1992, 12:00 p.m.: 15 IR 699; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2438) NOTE: Transferred from Department of Highways (120 IAC 4-5-5) to Indiana Department of Transportation (105 IAC 9-4-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 9-4-6 Installation of panels; violations**

**Authority:** IC 8-23-2-6

**Affected:** IC 9-21-4-5

Sec. 6. (a) Installation of a logo panel shall be done by the department or its authorized contractor.

(b) The department, or its contractor, shall monitor business facilities on a regular basis, and may conduct random inspections, to assure continued compliance with the conditions of this rule.

(c) The department, or its contractor, shall notify any business facility found not in compliance with any condition of this rule and request compliance within a reasonable time period. Upon reinspection, if the business facility is not in compliance, the business facility shall be deemed in violation of this rule. After two (2) findings of noncompliance with subsequent return to compliance with the same condition of this rule, finding a third noncompliance shall be deemed a violation of a condition of this rule.

(d) The department, or its contractor, may remove any logo panel for violation of any of the conditions of this rule.

(e) A business facility whose logo panel is removed for a violation of any condition of this rule may file as a new primary or secondary applicant. No preference will be granted for the prior installation of a logo panel. *(Indiana Department of Transportation; 105 IAC 9-4-6; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2327; errata, 7 IR 2546; filed Mar 2, 1988, 10:55 a.m.: 11 IR 2331; filed Jan 8, 1992, 12:00 p.m.: 15 IR 699; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2439) NOTE: Transferred from Department of Highways (120 IAC 4-5-6) to Indiana Department of Transportation (105 IAC 9-4-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

#### **105 IAC 9-4-7 Location of specific service signs; general requirements**

**Authority:** IC 8-23-2-6

**Affected:** IC 9-21-2; IC 9-21-4-5

Sec. 7. (a) When the spacing requirements in section 10 of this rule can be met, specific service signs may be erected along the interstate system and other freeways, except at the following locations:

(1) At an interchange where motorists cannot conveniently reenter the freeway and continue in the same direction of travel.

(2) Freeway to freeway interchanges.

(3) Interchanges where specific service signs are inappropriate due to safety considerations.

(b) The specific service signs should be located so as to take advantage of natural terrain, to have the least impact on the scenic environment, and to avoid visual conflict with other signs within the highway right-of-way. Unprotected specific service sign supports located within the clear zone shall be of a breakaway design.

(c) In the direction of traffic flow, successive specific service signs shall be those for "ATTRACTION", "CAMPING", "LODGING", "FOOD", and "GAS" in that order.

(d) The department will designate, by official action,

interchanges where specific service signs may not be erected due to safety considerations. (*Indiana Department of Transportation; 105 IAC 9-4-7; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2327; filed Jan 8, 1992, 12:00 p.m.: 15 IR 699; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2439*) NOTE: Transferred from Department of Highways (120 IAC 4-5-7) to Indiana Department of Transportation (105 IAC 9-4-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 9-4-8 Specific information permitted

Authority: IC 8-23-2-6

Affected: IC 9-21-2; IC 9-21-4-5

Sec. 8. (a) The types of services signs permitted are "GAS", "FOOD", "LODGING", "CAMPING", and "ATTRACTION" and only one (1) type of service per logo panel. To qualify for display on a specific service sign, the service facility must meet the requirements outlined in section 13 of this rule.

(b) The number of specific service signs permitted is limited to a maximum of one (1) for each type of service up to a maximum of four (4) specific service signs along an approach to an interchange. The number of logo panels permitted on a specific service sign is specified in section 11 of this rule. (*Indiana Department of Transportation; 105 IAC 9-4-8; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2327; filed Mar 2, 1988, 10:55 a.m.: 11 IR 2332; filed Jan 8, 1992, 12:00 p.m.: 15 IR 699; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2439*) NOTE: Transferred from Department of Highways (120 IAC 4-5-8) to Indiana Department of Transportation (105 IAC 9-4-8) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 9-4-9 Size and design; composition; general specifications

Authority: IC 8-23-2-4.1; IC 8-23-2-6

Affected: IC 9-21-4

Sec. 9. (a) The specific service signs shall have a blue reflectorized background with a white reflectorized border. The size of the specific service signs shall not exceed the minimum size necessary to accommodate the maximum number of logo panels permitted using the required legend height and the interline and edge spacing of current standards of the Indiana Manual on Uniform Traffic Control Devices.

(b) Logo panels shall have a blue background with white legend and border, except where standard business identification symbols or trademarks provide a background color. Signs shall be manufactured from sheet

aluminum (eighty-thousandths (.080) inches thick) with reflective sheeting. The principal legend should be at least equal in height to the directional legend on the specific service sign panel. Where business identification symbols or trademarks are used for a logo panel, the border may be omitted. The symbol or trademark shall be reproduced in the color and general design consistent with customary use, and any integral legend shall be in proportionate size. Messages, symbols, or trademarks which resemble any official traffic control device or tend to direct traffic are prohibited. The vertical and horizontal spacing between logo panels on specific service signs shall not exceed eight (8) inches and twelve (12) inches respectively.

(c) All directional arrows and all letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized. (*Indiana Department of Transportation; 105 IAC 9-4-9; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2327; errata, 7 IR 2546; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2440*) NOTE: Transferred from Department of Highways (120 IAC 4-5-9) to Indiana Department of Transportation (105 IAC 9-4-9) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### 105 IAC 9-4-10 Location of signs; special requirements

Authority: IC 8-23-2-6

Affected: IC 9-21-2; IC 9-21-4-5

Sec. 10. (a) Except as provided in section 11(c) of this rule, a separate specific service sign must be provided for each type of service upon which logo panels are displayed.

(b) The specific service signs should be erected between eight hundred (800) feet beyond the end of the last entrance taper of the previous interchange and eight hundred (800) feet minimum in advance of the exit lane taper, or the general motorist service sign if present, at the interchange from which the services are available. When longitudinal space permits, all specific service signs should be installed before the one (1) mile exit panel. There should normally be at least eight hundred (800) feet spacing between the signs, and at least eight hundred (800) feet visibility to a sign installed beyond a sight obstruction. Excessive spacing should be avoided.

(c) Specific service signs existing at the time this rule is adopted and not meeting these spacing requirements may remain in place for the remainder of their normal service life but no longer than fifteen (15) years from adoption of this rule. At the end of the service life or at some time before the fifteen (15) years limit is reached, signs not complying with these spacing requirements

should be removed or relocated in compliance with these requirements.

(d) When available space or other restrictions limit the number of specific service signs that may be installed approaching an interchange, the order of preference for choosing services to be displayed shall be "GAS", "FOOD", "LODGING", "CAMPING", "ATTRACTION".

(e) At single-exit interchanges, where service facilities having a logo panel are not visible from the ramp terminal, specific service ramp signs must be installed at the ramp terminal as follows:

- (1) Specific service ramp signs must include the distance and the directional arrow to the service facility.
- (2) The installation of specific service ramp signs shall be at the expense of the business facility.
- (3) The miniature logo panels installed on specific service ramp signs must be eighteen (18) inches high by twenty-four (24) inches wide.
- (4) The miniature logo panel on the specific service ramp sign will be installed after receipt of the miniature logo panel from the business facility.
- (5) Miniature logo panels, if required, must accompany the specific logo panel before any installations are made.

*(Indiana Department of Transportation; 105 IAC 9-4-10; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2328; errata, 7 IR 2546; filed Mar 2, 1988, 10:55 a.m.: 11 IR 2332; filed Jan 8, 1992, 12:00 p.m.: 15 IR 700; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2440) NOTE: Transferred from Department of Highways (120 IAC 4-5-10) to Indiana Department of Transportation (105 IAC 9-4-10) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### **105 IAC 9-4-11 Design; special requirements**

**Authority:** IC 8-23-2-6

**Affected:** IC 9-21-4

Sec. 11. (a) At single-exit interchanges, the name of the type of service followed by the exit number shall be displayed in one (1) line above the logo panels, or, as an alternate, the exit number may be placed above the specific service sign and the type of service(s) should be displayed in one (1) line above the logo panels. At unnumbered interchanges, the directional legend "NEXT RIGHT (LEFT)" shall be substituted for the exit number. The specific service sign shall be limited to six (6) logo panels for "GAS", "FOOD", "LODGING", "CAMPING", and "ATTRACTION".

(b) At double-exit interchanges, the specific service signs shall consist of two (2) sections, one (1) for each

exit. The top section shall display the logo panels for the first exit, and the lower section shall display the logo panels for the second exit. The name of the type of service followed by the exit number shall be displayed in a line above the logo panels in each section. At unnumbered interchanges, the legend "NEXT RIGHT (LEFT)" and "SECOND RIGHT (LEFT)" shall be substituted for the exit numbers. Where a type of motorist service is to be signed for at only one (1) exit, one (1) section of the specific service sign may be omitted, or a single-exit interchange sign may be used. The number of logo panels on the specific service sign (total of both sections) shall be limited to six (6) for "GAS", "FOOD", "LODGING", "CAMPING", and "ATTRACTION".

(c) At remote rural interchanges, where the number of qualified business facilities are limited, or at interchanges where longitudinal space limits the number of specific service signs that may be installed, logo panels for two (2) or three (3) types of services may be displayed on the same specific service sign. The permitted combinations are:

- (1) Up to two (2) logo panels for up to three (3) types of services.
- (2) Up to three (3) logo panels for two (2) types of services.
- (3) Up to four (4) logo panels for one (1) type of service and up to two (2) logo panels for one (1) other type of service.

The name of each type of service shall be displayed above its respective logo panel(s), and the exit number shall be displayed above the names of the types of services. At unnumbered interchanges, the legend "NEXT RIGHT (LEFT)" shall be substituted for the exit number. Logo panels should not be combined on a specific service sign when it is anticipated that additional service facilities will become available in the near future. When it becomes necessary to display more logo panels for a type of service displayed in combination, the logo panels involved shall then be displayed in compliance with subsection [subsections] (a) through (b).

(d) The normal orientation for specific service signs is with the longer dimension horizontal. At locations with extreme conditions, such as narrow right-of-way or steep slopes, where a horizontal installation is not practical, the longer dimension may be installed vertical with sections appropriate to the vertical orientation. The left section shall be for the first exit of a double-exit interchange and the right section for the second exit.

(e) When a specific service sign is divided into sections, a section may not be extended left or right, up or down to encroach into the area of another section. Specific service signs not in compliance with this provision [this section] at the time this rule is adopted may remain in place until the earlier of:

- (1) the end of the normal service life of the sign; or
- (2) a logo panel in the section with the extension is removed so that sections that comply may be established.

*(Indiana Department of Transportation; 105 IAC 9-4-11; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2328; filed Mar 2, 1988, 10:55 a.m.: 11 IR 2332; filed Mar 30, 1990, 3:30 p.m.: 13 IR 1390; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2441) NOTE: Transferred from Department of Highways (120 IAC 4-5-11) to Indiana Department of Transportation (105 IAC 9-4-11) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 9-4-12 Size; special requirements

**Authority:** IC 8-23-2-6

**Affected:** IC 9-21-4

Sec. 12. (a) Each logo panel displayed on the "GAS" specific service sign shall be contained within a forty-eight (48) inch wide and thirty-six (36) inch high rectangular background area, including border.

(b) Each logo panel on the "FOOD", "LODGING", "CAMPING", and "ATTRACTION" specific service signs shall be contained within a sixty (60) inch wide and thirty-six (36) inch high rectangular background area, including border.

(c) All letters used in the name of the type of service and the directional legend shall be ten (10) inch capital letters. Numbers shall be ten (10) inches in height. *(Indiana Department of Transportation; 105 IAC 9-4-12; filed Aug 13, 1984, 2:54 p.m.: 7 IR 2329; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2442) NOTE: Transferred from Department of Highways (120 IAC 4-5-12) to Indiana Department of Transportation (105 IAC 9-4-12) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

### 105 IAC 9-4-13 Qualification for logo panels

**Authority:** IC 8-23-2-6

**Affected:** IC 9-21-4

Sec. 13. (a) In addition to the specific requirements in this section, each applicant must hold valid licenses, permits, and/or approvals required of the facility by any appropriate governmental agency. Each business identified on a specific service sign must give written assurance to the state, or the contractor, of its conforming with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex, disability, or ancestry, and must not be in breach of that assurance.

(b) To qualify as an applicant for a "GAS" logo panel, a business facility must establish the following:

(1) Provide vehicle services, including fuel, oil, and water. Tire repair must be provided on-site, or information about tire repair off-site must be conspicuously posted. Tire repair shall be:

(A) sixteen (16) hours a day for seven (7) days a week for a primary applicant; or

(B) twelve (12) hours a day for seven (7) days a week for a secondary applicant; and

(C) performed on-site by employees or a subcontractor within one (1) hour; or

(D) performed off-site within a reasonable driving distance by another provider, with a list of off-site tire repair providers and copies of written directions to the provider available to motorists at the applicant's establishment.

(2) Provide modern public restroom facilities and drinking water.

(3) Be in continuous operation with a minimum of:

(A) Sixteen (16) hours a day for seven (7) days a week for a primary applicant.

(B) Twelve (12) hours a day for seven (7) days a week for a secondary applicant.

(4) Provide a public telephone.

(5) Be located within two (2) miles of the interchange and be on, or readily visible from, the intersecting crossroad.

(c) To qualify as an applicant for a "FOOD" logo panel, a business facility must establish the following:

(1) Provide modern public restroom facilities.

(2) Provide a public telephone.

(3) Be located within three (3) miles of the interchange and be on, or readily visible from, the intersecting crossroad.

(4) Provide a minimum seating capacity of twenty-five (25) persons.

(5) Provide meals a minimum of six (6) days per week. If applicable, the day of the week the business facility is not in operation shall be shown on or below the logo panel.

(6) Provide meal services a minimum of:

(A) Twelve (12) hours operation for three (3) meals a day opening at or before 8:30 a.m. for a primary applicant.

(B) Two (2) meals per day for secondary applicant.

(d) To qualify as an applicant for a "LODGING" logo panel, a business must establish the following:

(1) Provide a minimum of ten (10) separate sleeping units with modern sanitary facilities.

(2) Provide a public telephone.

(3) Have gasoline and food available within one (1) mile of the facility, between the facility and the interchange, or within the respective limits stipulated in subsections (b) and (c).

- (4) Be located within three (3) miles of the interchange and be on, or readily visible from, the intersecting crossroad.
- (e) To qualify as an applicant for a "CAMPING" logo panel, a business facility must establish the following:
- (1) Provide adequate waste disposal.
  - (2) Provide modern sanitary facilities, including an adequate number of toilets, lavatories, and showers for camping sites' capacity.
  - (3) Provide running water, drinking water, and electricity.
  - (4) Provide a minimum number of camping sites:
    - (A) Fifty (50) for primary applicant.
    - (B) Twenty-five (25) for secondary applicant.
  - (5) Be located within fifteen (15) miles of the interchange.
  - (6) Provide a public telephone.
  - (7) Provide continuous months of operation:
    - (A) Twelve (12) months for primary applicant.
    - (B) Six (6) months for secondary applicant. The secondary applicant shall provide for "CLOSED" panels during the months of closure. Posting of the closed panel, and subsequent removal, will be limited to one (1) time per year. Alternatively, the months of operation may be posted on or below the logo panel.
  - (8) Provide adequate trailblazing from the interchange to the facility.
- (f) To qualify as an applicant for an "ATTRACTION" logo panel, a business must establish the following:
- (1) Be of regional significance.
  - (2) Have adequate off-street parking for normal visitor demand.
  - (3) Provide modern public restroom facilities and drinking water.
  - (4) Provide a public telephone.
  - (5) Be located within fifteen (15) miles of the interchange.
  - (6) Provide adequate trailblazing from the interchange to the facility.
  - (7) Be one (1) or more of the following:
    - (A) Amusement park. A commercially operated park enterprise which supplies refreshments and various forms and devices for entertainment.
    - (B) Business district/main street community. The central business district of a community or an area within a community which has been officially designated as a main street community [*sic., community*] by the Indiana department of commerce. To qualify for this type of signage at an exit, there must be more than one (1) exit from the highway to access the community.
    - (C) Education center. A facility which is of outstanding educational value and which conducts tours on a regularly scheduled basis throughout the year.
    - (D) Golf course. Eighteen (18) hole minimum United States Golf Association regulation governed. Secondary applicant is the only applicant status available for golf course regardless of operation times outlined in [*subdivision*] (8) below.
    - (E) Historical site. A structure, district, or site listed on the Indiana Register of Historic Sites and Structures or the National Register of Historic Places as being of historical significance and which is open to the public.
    - (F) Museum. An organized and permanent institution, with professional staff, essentially educational or aesthetic in purpose, which owns or utilizes tangible objects, cares for them, and exhibits them to the public on some regular schedule.
    - (G) Religious site. A shrine, grotto, or similar type site which is of a unique religious nature.
    - (H) Resort/ski area/marina. A facility with those recreational amenities normally present at a facility which is the main focal point of a vacation and which is situated to take advantage of a natural, historic, or recreational attraction.
    - (I) U-pick/orchard/farmer's market. An established area or facility where consumers can purchase consumer picked or prepicked fresh Indiana grown food directly from Indiana producers.
    - (J) Winery. A facility that produces wine from grapes or other fruit and maintains a tasting room, sales, and tours.
    - (K) Botanical/zoological facility. A facility that houses and maintains a collection of unique living animals or plants and is open to the public.
  - (8) Have regularly scheduled operation for a minimum of:
    - (A) Eight (8) hours per day, seven (7) days per week all year for primary applicant.
    - (B) Six (6) hours per day for five (5) days per week for eight (8) continuous months per year for secondary applicant. If applicable, the day(s) of the week the business facility is not in operation shall be shown on or below the logo panel. The secondary applicant shall provide for "CLOSED" panels during the months of closure. Posting of the closed panel, and subsequent removal, will be limited to one (1) time per year. Alternatively, the months of operation may be posted on or below the logo panel.
  - (g) The department or its contractor will enter into contracts with primary applicants for the use of space on specific service signs. If space remains available on specific service signs after primary applicants have been contracted, the department or its contractor may enter into contracts with secondary applicants for use of the remaining space. (*Indiana Department of Transportation; 105 IAC 9-4-13; filed Aug 13, 1984, 2:54 p.m.: 7 IR*)

2329; errata, 7 IR 2546; filed Mar 2, 1988, 10:55 a.m.: 11 IR 2333; filed Oct 5, 1993, 5:00 p.m.: 17 IR 173; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed Mar 21, 2002, 4:40 p.m.: 25 IR 2442) NOTE: Transferred from Department of Highways (120 IAC 4-5-13) to Indiana Department of Transportation (105 IAC 9-4-13) by P.L.112-1989, SECTION 5, effective July 1, 1989.

### ARTICLE 10. OVERSIZE AND/OR OVERWEIGHT VEHICULAR PERMITS FOR HIGHWAYS

NOTE: Department of Highways was transferred to Indiana Department of Transportation. Whenever in any promulgated rule text there appears a reference to Department of Highways, substitute Indiana Department of Transportation.

Rule 1. Display of Tag

Rule 2. Special Weight Permit

#### Rule 1. Display of Tag

- 105 IAC 10-1-1 Purpose of rule
- 105 IAC 10-1-2 Definitions
- 105 IAC 10-1-3 Tag description; position

#### 105 IAC 10-1-1 Purpose of rule

Authority: IC 9-20-14-2

Affected: IC 9-29-6

Sec. 1. Purpose: To assist law enforcement in identifying vehicle movements on Indiana State Highways which exceed legal size and weight limits and to expedite the confirmation that a valid permit exists and that the transporting company is observing all conditions and provisions of the permit. (Indiana Department of Transportation; 105 IAC 10-1-1; filed Dec 7, 1981, 8:55 a.m.: 5 IR 13; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 5-1-1) to Indiana Department of Transportation (105 IAC 10-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 10-1-2 Definitions

Authority: IC 9-20-14-2

Affected: IC 9-29-6

Sec. 2. Definitions: Expiration Date—The last calendar day that a valid oversize and/or overweight vehicular permit is in effect.

Permit Number—A six digit number which specifically identifies a valid oversize and/or overweight vehicular permit.

Tag—A sign used to display the permit number and expiration date on a vehicle operating with a valid oversize and/or overweight vehicular permit.

Transporting Company—A person, partnership, company,

corporation, or association who bears full responsibility for an oversize and/or overweight vehicular movement.

Vehicle—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. (Indiana Department of Transportation; 105 IAC 10-1-2; filed Dec 7, 1981, 8:55 a.m.: 5 IR 13; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 5-1-2) to Indiana Department of Transportation (105 IAC 10-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 10-1-3 Tag description; position

Authority: IC 9-20-14-2

Affected: IC 9-29-6

Sec. 3. Any oversize and/or overweight vehicle or vehicle combination operating on highways under the jurisdiction of the Indiana Department of Highways and, having been issued a valid oversize and/or overweight vehicular permit, shall display at the Department's discretion, and as it may prescribe, a legible permit number and expiration date on a five (5) inches by twelve (12) inches white background or on a tag provided by the Department. The numerals of the permit number shall be black, a minimum two and one-half (2½) inches high with a one-quarter (¼) inch wide stroke. The letters and numerals of the permit expiration date shall be three-quarters (¾) inch high with a one-eighth (⅛) inch wide stroke. The position for displaying the tag shall be on the left rear of the vehicle or vehicle combination. (Indiana Department of Transportation; 105 IAC 10-1-3; filed Dec 7, 1981, 8:55 a.m.: 5 IR 13; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 5-1-3) to Indiana Department of Transportation (105 IAC 10-1-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### Rule 2. Special Weight Permit

- 105 IAC 10-2-1 Permit description
- 105 IAC 10-2-2 Permit durations
- 105 IAC 10-2-3 Fees and method of payment
- 105 IAC 10-2-4 Violation procedure
- 105 IAC 10-2-5 Insurance requirements
- 105 IAC 10-2-6 Responsibility
- 105 IAC 10-2-7 Permit tag
- 105 IAC 10-2-8 Extra heavy duty highways

#### 105 IAC 10-2-1 Permit description

Authority: IC 9-20-5-1

Affected: IC 9-20

Sec. 1. The Indiana department of highways shall issue

a special weight permit for the extra heavy duty highways and axle weights as defined in IC 9-8-1-12 [IC 9-8-1-12 was repealed by P.L.2-1991, SECTION 109, effective July 1, 1991.]. The special weight permits shall be issued to the tractor. The permitted vehicle shall be issued a single trip special weight permit or an annual permit.

A single trip special weight permit for one trip only shall be issued for a fee of \$42.50. A single trip special weight permit can be obtained from central office, a district office, or a sub district office.

An annual permit can be obtained from the central office permit section for the duration of a calendar year. A trip authorization permit for each and every single trip will be issued by the permit section to accompany the annual permit. The annual permit will not be valid unless accompanied by the trip authorization permit. The fee for the trip authorization permit shall be \$42.50 for each single trip. (*Indiana Department of Transportation; 105 IAC 10-2-1; filed Sep 19, 1986, 3:30 p.m.: 10 IR 218; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 5-2-1) to Indiana Department of Transportation (105 IAC 10-2-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 10-2-2 Permit durations**

**Authority:** IC 9-20-5-1  
**Affected:** IC 9-20

Sec. 2. The single trip special weight permit and the trip authorization permit will be valid for one calendar day. No extensions will be issued. The permitted vehicle will not be restricted to any specific hours of travel. Permits may be obtained for travel for any day of the week. (*Indiana Department of Transportation; 105 IAC 10-2-2; filed Sep 19, 1986, 3:30 p.m.: 10 IR 218; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 5-2-2) to Indiana Department of Transportation (105 IAC 10-2-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 10-2-3 Fees and method of payment**

**Authority:** IC 9-20-5-1  
**Affected:** IC 9-20

Sec. 3. The transporting company shall pay a fee of \$42.50 for each single trip special weight permit. The transporting company holding an annual special weight permit shall give the department evidence of sufficient bond and shall file within twenty (20) days after each quarter of the year, a report of all special weight trip authorization permits moved and shall pay a fee of

\$42.50 for each trip authorization permit. The transporting company shall maintain a log sheet, provided by the department, of all movements when paying by calendar quarter. The log sheet will be submitted at the end of the quarter with total payment due the department. (*Indiana Department of Transportation; 105 IAC 10-2-3; filed Sep 19, 1986, 3:30 p.m.: 10 IR 218; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 5-2-3) to Indiana Department of Transportation (105 IAC 10-2-3) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 10-2-4 Violation procedure**

**Authority:** IC 9-20-5-1  
**Affected:** IC 9-20

Sec. 4. No single trip special weight permit or annual permits will be issued to any transporting company once the department has received notice from any law enforcement agency of the transporting company operating in violation of any conditions, regulations and provisions that were a portion of their permit, until appropriate arrangements have been made with the department to prevent further violations. Multiple violations will result in the suspension of the annual permit and the transporting company will have 10 days to make full payment due the department or forfeit the bond on file. (*Indiana Department of Transportation; 105 IAC 10-2-4; filed Sep 19, 1986, 3:30 p.m.: 10 IR 218; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 5-2-4) to Indiana Department of Transportation (105 IAC 10-2-4) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 10-2-5 Insurance requirements**

**Authority:** IC 9-20-5-1  
**Affected:** IC 9-20

Sec. 5. A certificate of insurance shall be on file with the department showing insurance in full effect for the duration of any single trip special weight permits or trip authorization permits. (*Indiana Department of Transportation; 105 IAC 10-2-5; filed Sep 19, 1986, 3:30 p.m.: 10 IR 218; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 5-2-5) to Indiana Department of Transportation (105 IAC 10-2-5) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### **105 IAC 10-2-6 Responsibility**

**Authority:** IC 9-20-5-1  
**Affected:** IC 9-20

Sec. 6. Every such permit shall be carried in or on the vehicle or other object to which it refers and shall be

open to inspection by any peace officer. A person shall not violate any of the terms or conditions of such a special permit. the issuance of a special permit as provided in this section shall not relieve the responsibility for damages to highways imposed by this chapter and the issuance of any such a special permit for the use of a vehicle already registered and licensed, or for the use of a vehicle not subject to registration and licensing, under IC 9-1, or for the moving of objects other than vehicles under such a special permit, shall not require further registration and licensing in order to authorize the issuance of such a special permit. (*Indiana Department of Transportation; 105 IAC 10-2-6; filed Sep 19, 1986, 3:30 p.m.: 10 IR 218; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 5-2-6) to Indiana Department of Transportation (105 IAC 10-2-6) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 10-2-7 Permit tag

Authority: IC 9-20-5-1

Affected: IC 9-20

Sec. 7. Any decal or tag furnished for use with the permit shall be appropriately displayed as may be prescribed by the department. (*Indiana Department of Transportation; 105 IAC 10-2-7; filed Sep 19, 1986, 3:30 p.m.: 10 IR 219; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*) NOTE: Transferred from Department of Highways (120 IAC 5-2-7) to Indiana Department of Transportation (105 IAC 10-2-7) by P.L.112-1989, SECTION 5, effective July 1, 1989.

#### 105 IAC 10-2-8 Extra heavy duty highways

Authority: IC 8-23-2-6; IC 9-29-6-1

Affected: IC 9-20-5

Sec. 8. In addition to those extra heavy duty highways designated by statute, the Indiana department of transportation designates the following highways as extra heavy duty highways:

- (1) Highway 2, from the I/N Tek entrance on Larrison Boulevard to Highway 31.
- (2) Highway 31, from Highway 2 to the Michigan state line.

(*Indiana Department of Transportation; 105 IAC 10-2-8; filed Dec 9, 1992, 3:00 p.m.: 16 IR 1026; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

## ARTICLE 11. PREQUALIFICATION OF CONTRACTORS AND BIDDING

Rule 1. Definitions

Rule 2. Requirements for Prequalification of Contractors

Rule 3. Requirements for Bidding

### Rule 1. Definitions

105 IAC 11-1-1	Applicability
105 IAC 11-1-2	“Advertisement” defined
105 IAC 11-1-3	“Applicant” defined
105 IAC 11-1-4	“Application” defined
105 IAC 11-1-5	“Award” defined
105 IAC 11-1-6	“Bid bond” defined
105 IAC 11-1-7	“Bidder” defined
105 IAC 11-1-8	“Certificate of qualification” defined
105 IAC 11-1-9	“Commissioner” defined
105 IAC 11-1-10	“Contract” defined
105 IAC 11-1-11	“Contractor” defined
105 IAC 11-1-12	“Date of receipt” defined
105 IAC 11-1-13	“Department” defined
105 IAC 11-1-14	“Document” defined
105 IAC 11-1-15	“Engineer’s estimate” defined
105 IAC 11-1-16	“Notice to contractors” defined
105 IAC 11-1-17	“Notice to proceed” defined
105 IAC 11-1-18	“Performance bond” defined
105 IAC 11-1-19	“Plans” defined
105 IAC 11-1-20	“Prequalification committee” defined
105 IAC 11-1-21	“Prequalification engineer” defined
105 IAC 11-1-22	“Prequalification files” defined
105 IAC 11-1-23	“Project” defined
105 IAC 11-1-24	“Proposal” defined
105 IAC 11-1-25	“Quorum” defined
105 IAC 11-1-26	“Special provisions” defined
105 IAC 11-1-27	“Specifications” defined
105 IAC 11-1-28	“Standard specification book” defined
105 IAC 11-1-29	“Statement” defined
105 IAC 11-1-30	“Subcontractor” defined
105 IAC 11-1-31	“Supplemental specifications” defined
105 IAC 11-1-32	“Surety” defined
105 IAC 11-1-33	“Unearned work” defined

#### 105 IAC 11-1-1 Applicability

Authority: IC 8-23-2-6

Affected: IC 8-23-10

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana Department of Transportation; 105 IAC 11-1-1; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### 105 IAC 11-1-2 “Advertisement” defined

Authority: IC 8-23-2-6

Affected: IC 8-23-10

Sec. 2. “Advertisement” means the public announcement, as required by law, inviting bids for work to be performed or materials to be furnished. (*Indiana Department of Transportation; 105 IAC 11-1-2; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### 105 IAC 11-1-3 “Applicant” defined

Authority: IC 8-23-2-6

Affected: IC 8-23-10

Sec. 3. "Applicant" means the contractor or the sub-contractor who has filed an application with the department. (*Indiana Department of Transportation; 105 IAC 11-1-3; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-4 "Application" defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 4. "Application" means the statement filed with the department. (*Indiana Department of Transportation; 105 IAC 11-1-4; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-5 "Award" defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 5. "Award" means the acceptance by the department of a bid and authorization by the commissioner to enter into a contract. (*Indiana Department of Transportation; 105 IAC 11-1-5; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-6 "Bid bond" defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 6. "Bid bond" means the approved form of security furnished with a bid to guarantee that the bidder will enter into the contract if its bid is accepted. (*Indiana Department of Transportation; 105 IAC 11-1-6; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-7 "Bidder" defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 7. "Bidder" means an individual, partnership, firm, corporation, or combination of same submitting a bid for the advertised work. (*Indiana Department of Transportation; 105 IAC 11-1-7; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-8 "Certificate of qualification" defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 8. "Certificate of qualification" means the official document issued by the department which authorizes a contractor to bid on department contracts. (*Indiana*

*Department of Transportation; 105 IAC 11-1-8; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-9 "Commissioner" defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 9. "Commissioner" means the chief executive and chief administrative officer of the department who is responsible for administering the department. As used in this article, the designation "commissioner" means the commissioner, the commissioner's designee, or alternate. (*Indiana Department of Transportation; 105 IAC 11-1-9; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-10 "Contract" defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 10. (a) "Contract" means the written agreement between the department and the contractor setting forth the obligations of the parties thereto including, but not limited to, the following:

- (1) Performance of the work.
- (2) Furnishing labor and materials.
- (3) The basis of payment.
- (b) The contract may include, but is not limited to, the following:
  - (1) Proposal.
  - (2) Itemized proposal.
  - (3) Contract form.
  - (4) Bid bond.
  - (5) Performance bond.
  - (6) Specifications.
  - (7) Supplemental specifications.
  - (8) Special provisions.
  - (9) Additional special provisions.
  - (10) Information to bidders.
  - (11) Instructions to bidders.
  - (12) General and detailed plans.
  - (13) Notice to proceed.
  - (14) Any change orders and agreements that are required to complete the construction of the work in an acceptable manner (including authorized extensions thereof) all of which constitute one (1) instrument.

(*Indiana Department of Transportation; 105 IAC 11-1-10; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-11 "Contractor" defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 11. "Contractor" means the individual, partnership, firm, corporation, or combination of same contracting with or desiring to contract with the department for performance of prescribed work. (*Indiana Department of Transportation; 105 IAC 11-1-11; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-12 "Date of receipt" defined**

**Authority:** IC 8-23-2-6  
**Affected:** IC 8-23-10

Sec. 12. "Date of receipt" means the date the document is file stamped by the prequalification engineer. (*Indiana Department of Transportation; 105 IAC 11-1-12; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-13 "Department" defined**

**Authority:** IC 8-23-2-6  
**Affected:** IC 8-23-10

Sec. 13. "Department" means the Indiana department of transportation as constituted under the laws of Indiana for the administration of highway work. As used in this article, "department" means the Indiana department of transportation acting directly or through its authorized representative. (*Indiana Department of Transportation; 105 IAC 11-1-13; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-14 "Document" defined**

**Authority:** IC 8-23-2-6  
**Affected:** IC 8-23-10

Sec. 14. "Document" includes, without limitation:

- (1) writings;
- (2) drawings;
- (3) graphs;
- (4) charts;
- (5) photographs;
- (6) phono-records; and
- (7) other data compilations;

from which intelligence can be perceived, with or without the use of detection devices. (*Indiana Department of Transportation; 105 IAC 11-1-14; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-15 "Engineer's estimate" defined**

**Authority:** IC 8-23-2-6  
**Affected:** IC 8-23-10

Sec. 15. "Engineer's estimate" means the department's

estimated cost to construct the work covered by the contract. (*Indiana Department of Transportation; 105 IAC 11-1-15; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-16 "Notice to contractors" defined**

**Authority:** IC 8-23-2-6  
**Affected:** IC 8-23-10

Sec. 16. "Notice to contractors" refers to the written bulletin distributed by the department inviting bids for work to be performed, listing the type of work, location, qualification requirements, and the cost of the bidding documents. (*Indiana Department of Transportation; 105 IAC 11-1-16; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-17 "Notice to proceed" defined**

**Authority:** IC 8-23-2-6  
**Affected:** IC 8-23-10

Sec. 17. "Notice to proceed" refers to the written notice to the contractor to proceed with the contract work including, when applicable, the date of beginning of contract time. (*Indiana Department of Transportation; 105 IAC 11-1-17; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-18 "Performance bond" defined**

**Authority:** IC 8-23-2-6  
**Affected:** IC 8-23-10

Sec. 18. "Performance bond" means the approved form of security, furnished and executed by the bidder and its surety or sureties, guaranteeing complete execution of the contract and all supplemental agreements pertaining thereto and for the payment of all legal debts pertaining to the construction of the project. The performance bond will be in effect after both parties have signed the contract and the contract has been approved by the attorney general of the state of Indiana. (*Indiana Department of Transportation; 105 IAC 11-1-18; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-19 "Plans" defined**

**Authority:** IC 8-23-2-6  
**Affected:** IC 8-23-10

Sec. 19. "Plans" includes the approved plans, profiles, typical cross sections, working drawings, and supplemental drawings (or exact reproductions thereof) which show the location, character, dimensions, and details of the work to be done. (*Indiana Department of Transporta-*

tion; 105 IAC 11-1-19; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)

**105 IAC 11-1-20 “Prequalification committee” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 20. “Prequalification committee” means the committee appointed by the commissioner to establish the policies and procedures under which a contractor may be qualified. (*Indiana Department of Transportation; 105 IAC 11-1-20; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-1-21 “Prequalification engineer” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 21. “Prequalification engineer” refers to the administrative officer responsible for the administration of the qualification of contractors. The designation “prequalification engineer” means the prequalification engineer, the prequalification engineer's designee, or alternate. (*Indiana Department of Transportation; 105 IAC 11-1-21; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-1-22 “Prequalification files” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 22. “Prequalification files” means the files, singularly and in aggregate, of the prequalification engineer and prequalification committee which contain information relating to the qualification of a contractor. (*Indiana Department of Transportation; 105 IAC 11-1-22; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-1-23 “Project” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 23. “Project” means a specific section of the highway where work is to be performed under the contract. (*Indiana Department of Transportation; 105 IAC 11-1-23; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-1-24 “Proposal” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 24. “Proposal” means the offer of a bidder, on a prescribed form, to perform the work and to furnish the labor and materials at the prices quoted. (*Indiana Department of Transportation; 105 IAC 11-1-24; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-1-25 “Quorum” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 25. “Quorum” means that number of members of the prequalification committee or their designated alternates that constitutes a majority of its voting members. For this purpose, the chairman is not considered a voting member. (*Indiana Department of Transportation; 105 IAC 11-1-25; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-1-26 “Special provisions” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 26. “Special provisions” refers to additions and revisions to the standard and supplemental specifications covering conditions peculiar to an individual project. (*Indiana Department of Transportation; 105 IAC 11-1-26; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-1-27 “Specifications” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 27. “Specifications” refers to all directions, provisions, and requirements pertaining to performance of the work. (*Indiana Department of Transportation; 105 IAC 11-1-27; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-1-28 “Standard specification book” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 28. “Standard specification book” means the published book adopted by the department containing standard specifications and general provisions. (*Indiana Department of Transportation; 105 IAC 11-1-28; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-1-29 “Statement” defined**

Authority: IC 8-23-2-6  
Affected: IC 8-23-10

Sec. 29. "Statement" means the form titled "Contractors Statement of Experience and Financial Condition". (*Indiana Department of Transportation; 105 IAC 11-1-29; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-30 "Subcontractor" defined**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 30. "Subcontractor" means an individual, partnership, firm, corporation, or combination of same to whom the contractor sublets part of the contract. (*Indiana Department of Transportation; 105 IAC 11-1-30; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2185; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-31 "Supplemental specifications" defined**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 31. "Supplemental specifications" refers to additions and revisions to the standard specifications that are adopted subsequent to issuance of the standard specification book. (*Indiana Department of Transportation; 105 IAC 11-1-31; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2185; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-32 "Surety" defined**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 32. "Surety" means the corporate body bound with and for the contractor for the full and complete performance of the contract and for the payment of all debts pertaining to the work. When applied to the bid bond, it refers to the corporate body which engages to be responsible for the execution of the contract by the bidder, within the specified time. (*Indiana Department of Transportation; 105 IAC 11-1-32; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2185; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-1-33 "Unearned work" defined**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 33. "Unearned work" means the total dollar value of work contracted for but not performed. The value of items purchased and delivered, but not installed, is considered unearned work. For a specific department contract, the value of unearned work shall be based upon

the original amount bid, plus the value of items added by approved change orders, minus items deleted by approved change orders, minus the most recent progress estimate submitted by the department's project engineer/supervisor, minus this person's determination of items performed subsequent to the progress estimate but prior to the point in time for which unearned work is calculated. (*Indiana Department of Transportation; 105 IAC 11-1-33; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2185; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **Rule 2. Requirements for Prequalification of Contractors**

- 105 IAC 11-2-1 General requirements
- 105 IAC 11-2-2 Preparation and filing
- 105 IAC 11-2-3 Classification and capacity rating
- 105 IAC 11-2-4 Prequalification committee
- 105 IAC 11-2-5 Change in certificate of qualification
- 105 IAC 11-2-6 Suspension of certificate of qualification
- 105 IAC 11-2-7 Withdrawal of certificate of qualification
- 105 IAC 11-2-8 Revocation of certificate of qualification
- 105 IAC 11-2-9 Appeals procedure
- 105 IAC 11-2-10 Subcontractors
- 105 IAC 11-2-11 False statements
- 105 IAC 11-2-12 Gifts

#### **105 IAC 11-2-1 General requirements**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 1. (a) A contractor desiring to offer bids for the performance of contracts for the construction or maintenance of highways and bridges and appurtenances thereto must first be prequalified by the department and shall file a verified statement of experience and financial condition using the forms furnished by the department. The statement must include a complete report of the financial ability, adequacy of plant and equipment, organization, and experience of the applicant. The submission of a statement by the applicant is deemed authorization by the applicant for the prequalification committee to obtain all information which is deemed pertinent with respect to the applicant's financial worth, assets and liabilities, organization, personnel, construction experience, prosecution of work on previous contracts, condition and adequacy of equipment, and its attitude toward department regulations and the general public. A new statement is required at least once each year unless specifically requested at more frequent intervals.

(b) The commissioner or prequalification engineer may, at any time during which a certificate of qualification is in effect, demand a new statement. If the contractor does not furnish a new statement within sixty (60) days of the date of the request, the certificate of qualifi-

cation held by the contractor may be considered forfeited and the contractor may not be permitted to bid on contracts of the department until a new statement has been received and acted upon by the department.

(c) Complete answers to all interrogatories and the furnishing of all information as indicated by column headings, footnotes, or otherwise throughout the statement are an essential part of compliance with this article. Failure to provide complete and true information is grounds for rejection of the application for prequalification and provides grounds for immediate disqualification.

(d) The department will act on an application within thirty (30) days of its receipt. Statements will be considered in the order received as promptly as circumstances permit, except statements from new applicants who desire to bid on projects advertised must be received no later than twenty-one (21) calendar days prior to the bid opening date to receive consideration for that bid opening. A statement from a contractor for prequalification renewal must be received at least fifteen (15) calendar days prior to the bid opening date to receive consideration for that bid opening. A contractor who meets the time frames required by this subsection may submit bids contingent upon the results of its prequalification application.

(e) No bidder shall be given a certificate of qualification unless the review of its statement shows that it possesses net current assets sufficient in the judgment of the commissioner to render it probable that it can satisfactorily execute its contracts and meet its obligations.

(f) An applicant must possess the qualifications prescribed and be determined to be a competent and responsible bidder as verified by the inquiries and investigations of the department to qualify for a certificate of qualification. The areas considered for qualification of the contractor include, but are not limited to, the following:

- (1) Organization.
- (2) Personnel.
- (3) Construction experience.
- (4) Prosecution of work on previous contracts.
- (5) Condition and adequacy of equipment.
- (6) Financial condition and quality of financial information.
- (7) The contractor's attitude toward department rules and the general public.

An applicant will not be considered as competent and responsible if found to be of a character that would otherwise subject it to suspension, revocation, or disqualification.

(g) The prequalification committee shall make a recommendation to the commissioner regarding what

action shall be taken. The commissioner may, in the exercise of the commissioner's sole discretion, accept or reject the recommendation of the prequalification committee. The commissioner shall promptly send the contractor written notice of the decision. The certificate of qualification becomes effective after all avenues of appeal under section 9 of this rule are exhausted. Should such decision involve the addition of a classification or the increase of a rating to a certificate of qualification, the certificate of qualification shall become effective on the date the commissioner signs it and shall be in effect during administrative appeal under section 9 of this rule.

(h) For the purpose of determining competency and responsibility, the prequalification committee or the prequalification engineer may send evaluation forms either to those with whom the contractor has had present or previous business relationships or persons and entities who have utilized the past or present services of the contractor's employees. The responses received as a result of such inquiries are to be considered confidential for all purposes including, but not limited to, libel and slander. The responses received shall not be available under any circumstances to the contractor.

(i) No certificate of qualification will be valid for more than twelve (12) months, nor will its expiration date under any circumstance be subsequent to sixteen (16) months after the date of the statement upon which it is based. The certificate period will not be extended. The applicant will be notified if no certificate of qualification is issued.

(j) If, at any time during the valid period of a certificate of qualification, the latest statement on record with the department ceases to fairly and substantially represent the financial position or the construction equipment of the contractor to whom the certificate was issued, it shall be the responsibility of that contractor to so notify the prequalification engineer and to refrain from further bidding on contracts of the department until its qualification has been confirmed or revised. Failure to give such notice will constitute a violation of this article.

(k) A contractor shall not employ any scheme or device to evade this article or the effect of actions taken by the prequalification committee. Action taken by the prequalification committee for an entity controlled by certain owners or officers may be extended to other entities controlled by those same owners or officers, if the prequalification committee determines the extension is necessary to prevent a circumvention of this article.

(l) The department reserves the right to require a personal interview with any contractor when considering qualifications as a part of its investigation procedure. (*Indiana Department of Transportation; 105 IAC 11-2-1; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2185; filed Jun 14,*

1993, 5:30 p.m.: 16 IR 2538; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)

### 105 IAC 11-2-2 Preparation and filing

Authority: IC 8-23-2-6

Affected: IC 8-23-10-2; IC 8-23-10-3

Sec. 2. (a) The contractor must submit the original statement for prequalification to the prequalification engineer. This statement must be complete, clearly legible, and in ink or typed.

(b) If the date of the statement is more than six (6) months old when submitted, the prequalification engineer may request a new statement.

(c) An unaudited statement more than six (6) months old will not be considered for qualification.

(d) The financial statement furnished by an applicant for qualification of more than one million dollars (\$1,000,000) must be prepared and attested as audited by an independent:

- (1) certified public accountant registered and in good standing in any state; or
- (2) public accountant registered and in good standing in Indiana.

(e) The financial statement furnished by an applicant for qualification of more than two hundred thousand dollars (\$200,000) but not more than one million dollars (\$1,000,000) must be prepared and attested as reviewed by an independent:

- (1) certified public accountant registered and in good standing in any state; or
- (2) public accountant registered and in good standing in Indiana.

(f) A qualification of two hundred thousand dollars (\$200,000) or less may be granted if the statement furnished by the applicant is certified as correct by an officer of the company.

(g) The accountant shall make an independent verification of assets and liabilities in accordance with generally accepted auditing standards. The accountant's execution of the certificate of audit will constitute certification that an audit in accordance with such standards has actually been performed and reported.

(h) In the event of physical dispersal of construction equipment or of subsequent use or sale of construction materials, the accountant may accept a signed statement of the contractor as evidence of possession of equipment or of materials inventory as of the date of the statement, but this shall not relieve the accountant of the usual responsibilities as to the following:

- (1) Title.
- (2) Proper and consistent depreciation.
- (3) Liens or encumbrances.

(4) Reasonable pricing.

(i) Full and complete information, especially:

- (1) the age, date of purchase, and cost when purchased; and
- (2) the date if rebuilt;

must be provided for all major items of equipment. The nomenclature used must describe kind, manufacturer, type, capacity, etc., with additional details if necessary. All major items of useful equipment should be listed even though fully depreciated, but no obsolete or useless equipment is to be included.

(j) Contractors controlled by the same owners or officers desiring prequalification must use statements of a common date.

(k) The assets of a contractor shall be identified to support only one (1) prequalification at any time. If contractors controlled by the same owners or officers submit unaudited statements for prequalification, only one (1) of the entities may be prequalified unless the department is able to verify that assets and experience were not duplicated as a mechanism to artificially increase prequalification ratings.

(l) The statement of a corporation must be accompanied by a certified copy of the minutes covering the election of current officers and the current authorization of individuals designated to execute contracts binding the corporation. The current list of individuals authorized to execute contracts binding the corporation may be either a portion of the original articles of incorporation or some subsequent official action of the stockholders or the board of directors. If officers or authorization of individuals designated to execute contracts binding the corporation are changed in any manner, the contractor shall immediately notify and furnish the prequalification engineer with certified copies of appropriate documents.

(m) The initial statement of a foreign corporation must be accompanied either by valid evidence that it is registered and in good standing with the Indiana secretary of state or by a letter stating that, should it become the successful bidder on a department contract, authorization will be secured within fifteen (15) days after the bid opening. (*Indiana Department of Transportation; 105 IAC 11-2-2; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2187; filed Aug 23, 1994, 11:00 a.m.: 18 IR 7; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 11-2-3 Classification and capacity rating

Authority: IC 8-23-2-6

Affected: IC 8-23-10-2; IC 8-23-10-4

Sec. 3. (a) A contractor may be classified for one (1) or more types of work and will be rated in accordance with its financial ability, adequacy of plant and equipment,

organization, prior experience, record of construction, and other pertinent and material facts which may affect its classification. The contractor will be assigned a classification which will limit the type and quantity of uncompleted work it has under contract at any one (1) time as principal or subcontractor regardless of the location of the work or with whom it is contracted.

(b) A contractor will be assigned an aggregate amount that is to be considered the largest dollar amount of uncompleted work it shall have under contract at any one (1) time, either as principal or subcontractor, or both, regardless of its location and with whom it is contracted, with the following exception: If the aggregate amount is less than three hundred thousand dollars (\$300,000), the aggregate amount is to be considered the largest dollar amount of uncompleted work a contractor shall have under contract at any one (1) time as a principal, regardless of its location and with whom it is contracted. The largest dollar amount of uncompleted work the contractor shall have under contract at any one (1) time, as principal and subcontractor, regardless of its location and with whom it is contracted, shall not exceed three hundred thousand dollars (\$300,000).

(c) The contractor's maximum aggregate rating as determined from the statement will be the sum of the following rating components:

- (1) Net current assets multiplied by ten (10).
- (2) Construction equipment assets (net book value) multiplied by eight (8), but not to exceed one and one-half (1 1/2) times subdivision (1).
- (3) Net fixed and other assets multiplied by two (2), but not to exceed twenty-five percent (25%) of subdivision (1) plus subdivision (2).

(d) Accepted net current assets will be determined from the statement submitted and will be construed as to include only those net current assets which are readily convertible into working capital. Receivables from nongovernmental agencies over one (1) year old will be deducted for prequalification purposes.

(e) Notes due within one (1) year from the financial statement date will be considered a current liability. Notes due after twelve (12) months and within twenty-four (24) months will be considered a fixed liability and deducted from net fixed assets, and the excess, if any, will be deducted from the book value of the equipment. If this is insufficient, the excess will be deducted from the net current assets. Notes due after twenty-four (24) months will not be deducted for prequalification purposes.

(f) If the applicant has guaranteed loans of any person or any entity, or has used assets as security for these loans, or has made other guarantees or commitments of activities of any person or any entity, the department may

reduce or adjust the applicant's net current assets if in the judgment of the department the guaranteed loans, other guarantees, or commitments are significant when considered with the applicant's statement.

(g) Notes and accounts receivable from affiliated business firms will not be allowed as assets unless there is attached an audited financial statement showing the debtor has sufficient liquidity to discharge the debt, except an unaudited statement, certified as correct by the debtor, will be accepted if an unaudited statement is submitted for qualification. Notes and accounts receivable from partners of a partnership, or officers and stockholders of a corporation, may not be allowed as assets unless there is attached an audited financial statement.

(h) The book value and the market value for stocks and bonds are to be listed. Stocks and bonds will not be considered as working capital unless market value, determined or verified by the accountant, is given. Allowance for stocks and bonds is made for whichever is the lesser of the book or market value except that for stocks or bonds listed on the New York Stock Exchange, American Stock Exchange, or over-the-counter on the National Association of Securities Dealers Automated Quotations (NASDAQ) list, the market value will be used. Stocks of affiliates or subsidiaries which are qualified with the department will not be considered as assets.

(i) The value of useful construction equipment may be the book value listed or may be determined by the application of uniform depreciation schedules. No rating credit will be given for equipment which cannot be satisfactorily identified as to kind, type, and capacity or for which the essential information as to cost and age is not supplied.

(j) "Fixed and other assets" means those assets which have a collateral value but are not readily or normally converted into cash or not directly pertinent to the operation or financing of construction contracts. Construction equipment value in excess of the rating limitation of subsection (c)(2) will be considered as part of fixed assets.

(k) A contractor will first be given a tentative factor of one hundred percent (100%) in its aggregate and respective classified ratings. Each of these tentative factors may be reduced wholly or in part for the contractor's deficiencies in the following areas as determined from a summary of reports from field engineers, other investigations or an interview with the contractor, or both. The areas considered for qualification of the contractor include the following:

- (1) Organization.
- (2) Personnel.

- (3) Construction experience.
- (4) Prosecution of work on previous contracts.
- (5) Quality of workmanship on contracts.
- (6) Condition and adequacy of equipment.
- (7) The contractor's attitude toward department rules, the general public, and equal employment opportunity requirements.

(l) An "unlimited" qualification may be granted if a contractor's maximum aggregate rating exceeds one hundred million dollars (\$100,000,000).

(m) A contractor which has not performed work of any character under the firm name in its application and does not have, among its active staff, personnel of approved experience is not entitled to be rated for any work in excess of two hundred thousand dollars (\$200,000). An experience and performance factor reduction of not less than thirty percent (30%) will be made in the case of any organization which has not had previous experience on comparable work. (*Indiana Department of Transportation; 105 IAC 11-2-3; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2187; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-2-4 Prequalification committee**

**Authority:** IC 8-23-2-6

**Affected:** IC 5-14-1.5-6; IC 8-23-10

Sec. 4. (a) There is hereby created a prequalification committee.

(b) The commissioner shall appoint the members of the prequalification committee and designate one (1) of them as chairman. The chairman shall preside at meetings, but the chairman is not entitled to vote unless the vote of the members of the prequalification committee is tied. In event of a tie vote, the chairman shall cast the deciding vote. The prequalification engineer will serve as secretary of the prequalification committee, but the secretary is not entitled to vote. Each member may designate in writing to the secretary an alternate member.

(c) The prequalification committee shall meet monthly and as called by the chairman. The prequalification committee must have a quorum present in order to transact business. A majority of the votes cast is required to adopt a motion. Abstentions shall not count as votes cast. The secretary is required to take minutes, including date, place, and time of meeting, the names of all present or absent, and to record all motions made and the votes cast thereon. The secretary of the prequalification committee is responsible for the keeping of minutes and for sending and posting annual notices and notices of emergency meetings.

(d) The prequalification committee may meet in executive session to consider matters of initial applica-

tion for prequalification, renewal, suspension, change of classification or rating, revocation, appeal, or other matters pursuant to IC 5-14-1.5-6(b). During the executive session, the prequalification committee is entitled to consider confidential information.

(e) The prequalification committee shall have jurisdiction over all recommendations under this article. The prequalification committee may act either on referrals to the prequalification committee or on its own initiative.

(f) The prequalification committee may investigate, request documents, and interview witnesses and other persons or entities with information deemed relevant.

(g) The prequalification committee may recommend a course of action to the commissioner. The commissioner may accept or reject the recommendation of the prequalification committee. In the event that an initial certificate of qualification is issued, a certificate of qualification issued is reissued, a change is made in a classification or rating of a contractor's certificate of qualification, a contractor's issued certificate of qualification is suspended, or a contractor's issued certificate of qualification is revoked, the commissioner shall notify the contractor in writing. All actions of the commissioner under this article are considered to be effective after all avenues of appeal under section 9 of this rule are exhausted. If the action involves the addition of a classification or the increase of a rating to a certificate of qualification, the certificate will become effective on the date the commissioner signs it and will be in effect during the administrative appeal under section 9 of this rule. (*Indiana Department of Transportation; 105 IAC 11-2-4; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2189; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-2-5 Change in certificate of qualification**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 5. (a) The prequalification committee may recommend to the commissioner a change in the certificate of qualification issued to a contractor based upon the receipt of additional information. Notification of a change in a certificate of qualification will be made in writing and will become effective after all avenues of appeal under section 9 of this rule are exhausted. If the action involves the addition of a classification or the increase of a rating to a certificate of qualification, the certificate will become effective on the date the commissioner signs it and will be in effect during the administrative appeal under section 9 of this rule.

(b) A request from the contractor for a change in its qualification status must be in writing and received not

less than fifteen (15) days prior to the bid opening date. An applicant who has been refused qualification, or who is dissatisfied with the department's decision as to the aggregate amount of uncompleted work to be permitted under contract at any one (1) time, or with any limitation as to the class or classes of work on which the bidder is authorized to bid, may at any time after the expiration of ninety (90) days from the date of the department's previous decision request a change in or file a new application for qualification. (*Indiana Department of Transportation; 105 IAC 11-2-5; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2189; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-2-6 Suspension of certificate of qualification**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10-2

Sec. 6. (a) The prequalification committee may recommend to the commissioner the suspension of the contractor's certificate of qualification if the contractor's work is unsatisfactory, if it is apparent the contractor will be unable to complete its contracts on time, or if the contractor has failed to adequately document a current or previous contract.

(b) Notification of the suspension shall be made in writing, and the suspension will become effective after all avenues of appeal under section 9 of this rule are exhausted. The suspension will be lifted when the contractor has taken corrective action to the personal satisfaction of the commissioner. (*Indiana Department of Transportation; 105 IAC 11-2-6; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2190; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-2-7 Withdrawal of certificate of qualification**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10-2

Sec. 7. A certificate of qualification may be withdrawn if it has been administratively determined by the prequalification committee that the firm or corporation is no longer active or in existence. Notification of the withdrawal shall be made in writing and will become effective after all avenues of appeal under section 9 of this rule are exhausted. (*Indiana Department of Transportation; 105 IAC 11-2-7; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2190; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-2-8 Revocation of certificate of qualification**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10-2; IC 8-23-10-8

Sec. 8. (a) A certificate of qualification may be revoked if it is administratively determined by the prequalification committee that the contractor or subcontractor has done any of the following:

- (1) Failed to timely pay, or satisfactorily settle, any bills due to labor and material on former or existing contracts.
  - (2) Is found to be in violation of either a state or federal law or regulation or the rules and regulations of a state or federal department, board, bureau, agency, or commission.
  - (3) Defaulted on a contract.
  - (4) Failed to enter into a department contract.
  - (5) Falsified any document required by the department, state board of accounts, or any agency of the state of Indiana. For the purpose of this section, the term "falsify" means an intentional as well as a negligent act of omission or commission.
  - (6) Was convicted of a bidding crime resulting from a jury or bench trial, entered into a plea of guilty or nolo contendere, made a public admission, made a presentation as an unindicted co-conspirator, or gave testimony, which is protected by a grant of immunity, in any jurisdiction.
  - (7) Failed to perform any part or portion of an existing or previous contract.
  - (8) Failed to submit in a timely manner information, documented explanations, and/or evidence required in the contract documents or proposal.
  - (9) Has been debarred by a federal agency.
  - (10) Failed to comply with any and all proposal requirements concerning disadvantaged business enterprise (DBE) and women business enterprise (WBE) goals.
  - (11) Had knowledge that a subcontractor further subcontracted its work.
  - (12) Offered or gave a gift with a market value of ten dollars (\$10) or more, to a unit, officer, or employee of the department, or repetitively offered or gave gifts of a value of ten dollars (\$10) or less to a unit, officer, or employee of the department.
- (b) Notification of such pending action shall be made in writing, setting forth the grounds for the proposed certificate revocation. The revocation will become effective after all avenues of appeal under section 9 of this rule are exhausted. The period of disqualification will not exceed two (2) years. (*Indiana Department of Transportation; 105 IAC 11-2-8; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2190; filed Jun 25, 1992, 5:00 p.m.: 15 IR 2452; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-2-9 Appeals procedure**

**Authority:** IC 8-23-2-6

**Affected:** IC 4-21.5; IC 8-23-10

Sec. 9. (a) A contractor aggrieved by the decision of the department in regard to the contractor's qualification, suspension, withdrawal, revocation, or change in either classification or rating may make a written request for consideration to the prequalification engineer, with a copy to the commissioner, within fifteen (15) days after receiving such notification.

(b) The contractor may follow the procedure outlined in STEP ONE and STEP TWO, or the contractor may elect for a hearing as set forth in STEP TWO. The contractor shall, in its letter, specify which relief it is requesting. If the contractor fails to make an election in its letter, it will be presumed that the contractor has elected to follow and be bound by the procedural steps and cutoff procedures set forth in STEP ONE and STEP TWO, in that order as follows:

STEP ONE: The request must include written justification bearing on its qualification. In addition, the contractor may request a personal interview. The prequalification committee will consider the written request by certified mail or personal service within fifteen (15) days after its receipt. The prequalification committee may request additional information, a personal interview with the contractor, or both. The prequalification committee will make a recommendation to the commissioner who shall notify the contractor in writing of the decision. The decision becomes effective after all avenues of appeal under STEP TWO are exhausted. It will be presumed that in the event the contractor has made no election as to a personal interview that the contractor has elected not to request a personal interview.

STEP TWO: If the contractor is dissatisfied with the STEP ONE decision, the contractor may make a written request by certified mail or personal service within fifteen (15) days of receipt of the STEP ONE decision for an adjudication hearing in accordance with IC 4-21.5. This request must be sent to the prequalification engineer with a copy to the commissioner. Upon receipt of the notice, the commissioner will serve the contractor with written notice of the date, place, and time of the hearing and written notice of the appointment of an administrative law judge.

(c) The hearing will be held within thirty (30) days of the receipt of the request, unless otherwise ordered by the administrative law judge.

(d) At the hearing, the contractor will bear the burden of proof when the action of the commissioner is under sections 1 through 2 of this rule. At the hearing, the contractor shall bear the burden of proof when the action of the commissioner is under either section 3 or 5 of this rule, unless the action involves the reduction of an unexpired certificate of qualification. At the hearing, the

department shall bear the burden of proof when the action of the commissioner is under either sections 6 through 8 of this rule or section 11 of this rule.

(e) If the contractor fails to follow subsection (b) within the specified time frames, the contractor will be deemed to have accepted the decision of the department as final and deemed to have waived any right to further administrative appeal. (*Indiana Department of Transportation; 105 IAC 11-2-9; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2190; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 11-2-10 Subcontractors

Authority: IC 8-23-2-6

Affected: IC 8-23-10-4

Sec. 10. (a) It is unlawful for a successful bidder to enter into a subcontract with any other person involving the performance of any part of any work upon which the bidder may be engaged for the department in an amount in excess of one hundred thousand dollars (\$100,000) unless the subcontractor has been properly qualified for the work sublet to it.

(b) The prequalification requirements of this section do not apply to:

(1) professional services; or

(2) hauling material or supplies to or from a job site.

(c) All subcontracts must be approved by the department prior to work being performed by the subcontractor.

(d) The department may request disclosure of a subcontractor's board of directors, shareholders, officers, and principal individuals or employees prior to subcontract approval. Failure to disclose such information may result in denial of subcontract approval.

(e) A contractor that is not prequalified may be prohibited from performing subcontract work or limited in the dollar value thereof if the contractor has been found in violation of a rule that would subject a contractor to suspension, revocation, or reduction of its certificate of qualification.

(f) A contractor whose certificate of qualification is revoked or suspended will not be approved to perform work as a subcontractor on a department contract.

(g) A subcontractor that does not have a valid certificate of qualification will be limited to a total of three hundred thousand dollars (\$300,000) in unearned work under contract on any given date with any owner, contractor, or other party. (*Indiana Department of Transportation; 105 IAC 11-2-10; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2191; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 11-2-11 False statements

Authority: IC 8-23-2-6

Affected: IC 8-23-10-8

Sec. 11. An applicant who is convicted of knowingly making a false statement with respect to the applicant's financial worth in an application for qualification, financial statement, or other written instrument filed by the applicant with the department under this rule is not entitled to submit bids for a period of two (2) years following the date of conviction. (*Indiana Department of Transportation; 105 IAC 11-2-11; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2192; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 11-2-12 Gifts

Authority: IC 8-23-2-6

Affected: IC 8-23-10-2

Sec. 12. A contractor shall not offer or give a gift, including, but not limited to, money, goods, services, meals, and entertainment, to any unit, officer, or employee of the department if such gift has a fair market value of ten dollars (\$10) or more. Repetitive offering or giving gifts of a value of ten dollars (\$10) or less is also prohibited. "Unit" means any district, division, section, or other group of department employees. Exceptions to this provision must be approved in writing by the department's commissioner. (*Indiana Department of Transportation; 105 IAC 11-2-12; filed Jun 25, 1992, 5:00 p.m.: 15 IR 2452; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### Rule 3. Requirements for Bidding

- 105 IAC 11-3-1 Equal employment opportunity
- 105 IAC 11-3-2 Issuance of proposals
- 105 IAC 11-3-3 Qualification
- 105 IAC 11-3-4 Bidding capacity
- 105 IAC 11-3-5 Joint ventures
- 105 IAC 11-3-6 Examination of contract documents and site of work
- 105 IAC 11-3-7 Preparation of proposal
- 105 IAC 11-3-8 Bid and performance bonds
- 105 IAC 11-3-9 Combination proposals
- 105 IAC 11-3-10 Conditional proposals
- 105 IAC 11-3-11 Delivery of proposals
- 105 IAC 11-3-12 Withdrawal or revision of proposals
- 105 IAC 11-3-13 Public opening of proposals
- 105 IAC 11-3-14 Consideration of proposals
- 105 IAC 11-3-14.5 Tax liability
- 105 IAC 11-3-15 Corporations
- 105 IAC 11-3-16 Rejection of proposals after opening

### 105 IAC 11-3-1 Equal employment opportunity

Authority: IC 8-23-2-6

Affected: IC 8-23-10

Sec. 1. A contractor who desires to bid, or perform work on department contracts, must first file an affidavit

accepting equal employment opportunity requirements. (*Indiana Department of Transportation; 105 IAC 11-3-1; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2192; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 11-3-2 Issuance of proposals

Authority: IC 8-23-2-6

Affected: IC 8-23-10

Sec. 2. (a) When requested, bidding proposals will be issued to any properly qualified contractor up to 4:30 p.m., Indianapolis time on the last work day immediately preceding the bid opening date unless otherwise indicated in the advertisement. A proposal issued for informational purposes only will be marked "sample proposal" and will not be accepted as a bid from any person. The prospective bidder, and other persons, will be required to pay the sum stated in the "Notice to Contractors" for bidding material ordered. No refunds will be made for materials ordered and returned except in cases of error in filling orders or when a project advertised is withdrawn prior to the bid opening.

(b) The contractor or bidder purchasing a proposal and plans accepts and assumes the risk that the proposal and plans are complete. Before the submission of a bid, the contractor or bidder shall check the proposal and plans to see that they are complete. The contractor or bidder agrees to waive all claims relating to the completeness of the proposal and plans. If an error is found, the contractor shall notify the prequalification engineer in writing at least ten (10) days before the date the bids are to be opened. (*Indiana Department of Transportation; 105 IAC 11-3-2; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2192; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 11-3-3 Qualification

Authority: IC 8-23-2-6

Affected: IC 8-23-10

Sec. 3. (a) The department's "Notice to Contractors" will list one (1) or more types or classes of work for a contract. A bidder must have bidding capacity equal to or greater than its total bid in the advertised class or combination of classes of work listed in the department's Notice to Contractors for the specific contract.

(b) A contractor not acceptable to the Federal Highway Administration is not eligible for work on a contract involving federal funds. (*Indiana Department of Transportation; 105 IAC 11-3-3; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2192; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 11-3-4 Bidding capacity

Authority: IC 8-23-2-6

Affected: IC 8-23-10

Sec. 4. (a) The bidder's bidding capacity with the department on any given date will be determined by deducting the value of all unearned work as of that date on contracts and subcontracts for work of any owner, contractor, or other party from the aggregate rating and from the appropriate classified ratings which are stated on its certificate of qualification except, if the bidder's aggregate amount is less than three hundred thousand dollars (\$300,000), the bidder's bidding capacity with the department on any given date will be determined as the lesser of the following:

(1) The value of all unearned work as of that date on contracts for work of any owner or other party deducted from the aggregate rating and from the appropriate classified ratings which are stated on the bidder's certificate of qualification.

(2) The value of all unearned work as of that date on contracts and subcontracts for work of any owner, contractor, or other party deducted from three hundred thousand dollars (\$300,000).

(b) The value of work subcontracted on existing contracts of the department to an approved subcontractor will not be considered as unearned work of the bidder in determining the contractor's bidding capacity.

(c) It shall be the responsibility of each qualified bidder to ensure that a bid submitted for a single contract does not exceed its bidding capacity on the date bids are opened. If the bidder does not limit the sum of its regular bids to the volume of work permitted by its bidding capacity, the department may selectively award low bids up to, but not exceeding, the bidder's bidding capacity.

(d) The bidder must show, on the form provided in each proposal, the following:

(1) The amount and type of all unearned work under contract either as principal or subcontractor, based on the latest engineer's or owner's estimate, with proper allowance for work subsequently performed.

(2) The portion of such unearned work on department contracts which is sublet to an approved subcontractor.

(e) The commitment of personnel and equipment on a payroll or rental basis for the performance of definite and specific work must be reported as unearned work even though no formal contract exists. (*Indiana Department of Transportation; 105 IAC 11-3-4; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2192; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2539; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-3-5 Joint ventures**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 5. (a) A bid of two (2) or three (3) contractors will be considered a joint venture. No more than three (3)

contractors will be permitted as parties to a joint venture. All contractors applying for joint venture approval must be prequalified separately.

(b) A contractor that is a member of a joint venture may not submit a proposal, in its individual capacity or as a participant in another joint venture, for the same contract on which the joint venture bids.

(c) The bidding proposal will be taken out in the name of the joint venture. It shall be signed by each participating contractor with each contractor fully responsible for the completion of all contract items. The contractors in the joint venture may combine their individual bidding capacities in order to meet the requirements of section 3 of this rule. A contractor in a joint venture shall have bidding capacity for the work the contractor is to perform. The bid items or the percentage of the bid item to be performed by a contractor in the joint venture must be shown in the proposal. The value thereof will be charged to the individual contractor's aggregate and classified bidding capacity.

(d) A request for a joint venture is subject to department approval and must be in writing on the form prescribed by the department. The form must be signed by all parties involved in the joint venture. The form must be notarized by a notary public unrelated to any party to the joint venture, and the form must be received in the office of the prequalification engineer not later than 9:00 a.m., local time, the last work day before the bid opening. The prescribed form is available from the prequalification engineer.

(e) The bid and performance bond may be executed by a surety for all parties to the joint venture, or a separate bid and performance bond may be executed for each participating contractor. When more than one (1) surety is used, a letter of agreement on the form available from the department must be included with the bid and signed by each surety. (*Indiana Department of Transportation; 105 IAC 11-3-5; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2193; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 11-3-6 Examination of contract documents and site of work**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 6. (a) The bidder shall make a careful visual examination of the site of the proposed work and the contract documents before submitting a proposal. The submission of a proposal will be considered conclusive evidence that the bidder has made a careful visual examination of the project site and contract documents.

(b) When an item listed as a pay item is shown on the plans and not in the itemized proposal, and the item is not

specifically excluded from payment in the specifications or in the contract documents, the item will be considered an omission in the itemized proposal, and payment will be made by the execution of a change order.

(c) Information pertaining to exploration, borings, test pits, and other preliminary investigations may appear on the plans. Soils investigation reports, when available, will be made available for inspection upon request. While the data will have been collected with reasonable care, there is no expressed or implied guarantee that conditions so indicated are entirely representative of those actually existing, or that unanticipated conditions may not exist. These investigations will have been made only for the information of the engineer and to assist in the preparation of the design. The state of Indiana assumes no responsibility for the completeness of the information nor for the actual subsoil or other conditions which may be found to exist during the progress of construction unless otherwise provided in the contract. The bidder shall put its own interpretation on results of the investigations and satisfy itself as to materials to be excavated and soil through which piles may be driven.

(d) If a bidder contemplating the submission of a proposal for a contract is in doubt as to the true meaning of any part of the plans, specifications, or other contract documents, the bidder may submit to the prequalification engineer a written request for an interpretation thereof. The request must be delivered to the prequalification engineer not later than ten (10) days before the advertised date for the opening of bids. Such interpretation will be made by an authorized representative of the department and be sent to all bidders who have purchased or who subsequently purchase the bidding proposal and plans for that project. The department will not be responsible for other interpretations of the contract documents.

(e) With respect to utilities and railroads, the bidder is responsible for what a review of the project site and contract documents would have disclosed. If there are obvious problems with respect to utilities or railroads, the bidder shall make a reasonable inquiry of the utility or railroad before submitting its proposal. (*Indiana Department of Transportation; 105 IAC 11-3-6; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2193; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 11-3-7 Preparation of proposal**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-9-21; IC 8-23-10

Sec. 7. (a) All papers bound with or attached to the proposal are considered a part thereof and shall not be detached or altered when the proposal is submitted. The documents designated in the proposal will be considered

a part of the proposal whether attached or not.

(b) The quantities appearing in the itemized proposal are approximate and are prepared for the comparison of bids. Payment to the contractor will be made only for the actual quantities of work performed and accepted or for materials furnished in accordance with the contract, unless otherwise provided. The scheduled quantities of work to be done and materials to be furnished may be increased, decreased, or omitted.

(c) The bidder must submit its bid on the proposal purchased from the department or on other authorized documents. The proposal must show the products of the respective unit prices and quantities written in figures in the column provided for that purpose and the total amount of the proposal obtained by adding the several items. All figures must be in ink or typed.

(d) The bidder may submit itemized proposal sheets that have been produced by computer in lieu of the itemized proposal sheets furnished by the department. The computerized itemized proposal sheets shall be formatted as follows:

(1) The size of the sheets must be eight and one-half (8 1/2) inches by eleven (11) inches.

(2) The contract number must be shown in the upper right hand corner of each sheet.

(3) The letting date must be shown on each sheet.

(4) A revision date must be shown on each sheet if a revision to the itemized proposal has been issued.

(5) The bidder's printed name must be shown on each sheet.

(6) The sheet number must be shown on each sheet.

(7) A line or space must be placed between pay items.

(8) Item numbers must be placed in numerical order corresponding with those on the supplied itemized proposal sheets.

(9) Item descriptions, quantities, prices, and units must correspond with those shown on the supplied itemized proposal sheets.

(10) A unit price must be shown for each item, except lump sum may be entered in place of the unit price where appropriate.

(11) A price extension must be shown for each item.

(12) The total bid amount must be clearly indicated on the last sheet.

(13) The blank itemized proposal sheets furnished by the department must be included in the proposal book when submitted for letting, and all computerized itemized proposal sheets must be inserted in numerical order in front of the itemized proposal sheets furnished by the department.

(e) If a bidder states an incorrect item description, quantity, price, or unit, then the item description, quantity, price, or unit shown on the department's itemized

proposal sheets, will control. The department will correct an incorrect item number if the bidder's intent is clear. The department will compute the bid based on the item numbers shown on the bidder's computerized itemized proposal sheets, and any corresponding item numbers the department corrects, the quantity and units for each item shown on the department's itemized proposal sheets, and the bidder's unit price or lump sum price for each item, regardless of the item description, quantity, or unit shown on the computerized itemized proposal sheets. If the bidder bids on item numbers deleted or not included in the department's itemized proposal sheets, the department will disregard the items and adjust the total bid accordingly. In the event the bidder bids on both computerized and department itemized proposal sheets, the department's itemized proposal sheets shall govern. The bidder is responsible for all errors.

(f) A bidder must file a sworn or unsworn statement executed by or on behalf of the person, firm, association, or corporation submitting the bid, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. The required form for the statement will be provided to each prospective bidder.

(g) When an alternate bid is requested, or when an item in the proposal contains a choice to be made by the bidder, the bidder must indicate its choice in accordance with the special provisions or specifications for that particular item, and thereafter no further choice will be permitted.

(h) The bidder's proposal must show the firm name or names and be signed in ink:

- (1) by the individual;
- (2) by one (1) or more members of the partnership;
- (3) by one (1) or more members or officers of each company representing a joint venture;
- (4) by one (1) or more members or officers of a corporation duly authorized to sign contracts; or
- (5) by an agent of the bidder legally qualified and acceptable to the department.

(i) The bidder must properly execute and sign the following:

- (1) The bid bond.
- (2) The performance bond.
- (3) The highway contract form.
- (4) The proposal.
- (5) The noncollusion statement or noncollusion affidavit.
- (6) The current contractual obligations.
- (7) All other forms included in the proposal before submitting same.

All forms must bear the same signature throughout. The contract documents must include authorized signatures and titles in order for the contract documents to be considered properly executed.

- (j) An instrument submitted shall not be notarized by:
- (1) a party to the transaction;
  - (2) any officer, owner, or stockholder of the company; or
  - (3) any relative of the signatory.

*(Indiana Department of Transportation; 105 IAC 11-3-7; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2194; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2540; filed Jul 15, 1993, 4:00 p.m.: 16 IR 2821; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

### **105 IAC 11-3-8 Bid and performance bonds**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-9

Sec. 8. (a) A bidder must submit a bid bond and a performance bond with its proposal, except as provided in subsection (c). The bonds must be properly executed by a surety company satisfactory to the department and be payable to the state of Indiana.

(b) An Indiana resident agent or a nonresident agent, licensed in Indiana, or an employee of the surety company must execute the bonds. All executed bid and performance bonds must be accompanied by a valid power of attorney letter.

(c) On contracts for roadside mowing, vegetation control, demolition, landscaping, fencing, seeding and sodding, bridge painting, and guardrail installations of one hundred thousand dollars (\$100,000) or less, the bidder may elect not to furnish a performance bond. If the bidder elects not to furnish the performance bond, an amount equivalent to ten percent (10%) of the amounts payable will be deducted and retained by the department until final payment is made.

(d) The bid bond must be in the penal sum of an amount equal to five percent (5%) of the amount bid. The performance bond must be in the penal sum of an amount not less than one hundred percent (100%) of the amount bid.

(e) The department will require a surety company furnishing a bond to a bidder in an amount exceeding the underwriting limitations, as shown by the latest U.S. Department of the Treasury's register, to file the necessary reinsurance agreements with the department, on forms provided by the department, within fifteen (15) days from the date of notification to the contractor of insufficient bond. The reinsurance agreements must be furnished by a surety company acceptable to the department.

(f) Failure to furnish the reinsurance agreements within the stated time will be cause for forfeiture of the bid

bond and reduction in the bidder's prequalification. At the discretion of the commissioner, the award of the contract may be made to the next eligible bidder, or the work may be readvertised, or all bids may be rejected and the work not readvertised. (*Indiana Department of Transportation; 105 IAC 11-3-8; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2195; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2541; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 11-3-9 Combination proposals**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 9. If the department elects, proposals may be issued for projects in combination or separately, so that bids may be submitted either on the combination or on separate units of the combination. The commissioner may make awards on combination bids or separate bids to the best advantage of the state. No combination bids, other than those specifically set up in the proposals by the department, will be considered. (*Indiana Department of Transportation; 105 IAC 11-3-9; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 11-3-10 Conditional proposals**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 10. (a) Contracts on which bids are requested will be advertised as "Construction Contracts Group R", "Construction Contracts Group B", "Traffic Contracts Group T", or "Maintenance Contracts Group M". Proposals will be marked "regular" or "conditional", and the bidder shall strike out the word which does not apply; otherwise, the proposal will be considered regular. A bidder may submit either a regular or a conditional proposal on a contract unless otherwise stated in the Notice to Contractors or the special provisions, provided, the bidder submits at least one (1) regular proposal in the same group. The sum of a bidder's regular proposals in all groups and the bidder's uncompleted work on hand must not exceed the bidder's qualification limits.

(b) The bidder may submit a maximum of three (3) conditional proposals in a group, conditional on its failure to be the lowest bidder on its regular proposals in that group. If the bidder submits more than three (3) conditional proposals in a group, the commissioner will reject all conditional proposals of that bidder which apply to that particular group. If all of the bidder's regular proposals in a group are the lowest acceptable bids, then all of its conditional proposals in that group will be null and void.

(c) For each of the regular proposals of a bidder in a group which is not the lowest acceptable bid, the commissioner may select one (1) of the bidder's conditional proposals in that group, and it will then become regular. The commissioner will select conditional proposals to the best advantage of the state. No bidder will be awarded contracts in a group exceeding the number of its regular proposals submitted in that group. (*Indiana Department of Transportation; 105 IAC 11-3-10; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 11-3-11 Delivery of proposals**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 11. A bidder must submit each proposal in a sealed envelope prior to the time and at the location specified in the advertisement. The blank spaces on the envelope furnished must be filled in correctly to clearly indicate its content. When an envelope other than the one furnished by the department is used, it must be of the same general size and shape and be similarly marked to clearly indicate its contents. Proposals received after the time advertised for opening of bids will be returned to the bidder unopened. (*Indiana Department of Transportation; 105 IAC 11-3-11; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 11-3-12 Withdrawal or revision of proposals**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 12. A bidder may withdraw or revise a proposal after it has been deposited with the department if the request for withdrawal or revision is received by the department in writing at the location specified in section 11 of this rule prior to the time set for receipt of bids. (*Indiana Department of Transportation; 105 IAC 11-3-12; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### **105 IAC 11-3-13 Public opening of proposals**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-9-1; IC 8-23-10

Sec. 13. Proposals will be opened and read publicly on the date and at the time and place advertised or at another public place that the commissioner may designate on the day the bids are to be opened. Bidders, their authorized agents, and other interested parties are invited to be present. (*Indiana Department of Transportation; 105 IAC 11-3-13; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 11-3-14 Consideration of proposals****Authority:** IC 8-23-2-6**Affected:** IC 8-23-9; IC 8-23-10

Sec. 14. (a) After the proposals are opened and read, the proposals will be compared on the basis of the summation of the products of the quantities shown in the department's itemized proposal by the unit prices bid. If no unit price is shown for a pay item, the unit price will be determined by dividing the extension by the quantity shown in the department's itemized proposal. If no extension or unit price is shown for one (1) pay item, the extension will be determined by subtracting the extensions from the contractor's total bid amount, provided that there are no errors in the contractor's extensions. The results of such comparisons will be available to the public. In the event of a discrepancy between unit prices bid and extensions, the unit prices bid will govern.

(b) The award of a contract, if it will be awarded, will be made after the opening of bids to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed in the proposal and this article, provided the sum is not greater than the engineer's estimate. However, the commissioner may award a contract if the bid is not more than five percent (5%) above the engineer's estimate and the commissioner believes that awarding a contract is in the best interests of the state. If the notice to proceed is not dated within sixty (60) days of the opening of bids, the proposal may be withdrawn by the contractor or the award rescinded by the commissioner. However, the proposal may not be withdrawn by the contractor if the notice to proceed is not dated within sixty (60) days of the opening of bids due to any of the following reasons:

- (1) The contractor fails to furnish requested forms or information.
- (2) The contractor has agreed to a delay.
- (3) The department is involved in any judicial or administrative action or appeal relating to:
  - (A) a minority business enterprise;
  - (B) a disadvantaged business enterprise;
  - (C) a women's business enterprise goal or program; or
  - (D) any other judicial or administrative action arising out of the proposal.
- (4) The contractor, either directly or indirectly, causes a delay through its commission or omission.
- (5) The proposal states otherwise.

(c) No proposal will be binding on the department until the contract form has been properly executed by the commissioner and approved by the attorney general. The contractor will not be compensated for any costs incurred prior to the notice to proceed. (*Indiana Department of Transportation; 105 IAC 11-3-14; filed Jul 25, 1991,*

*3:30 p.m.: 14 IR 2196; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2541; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

**105 IAC 11-3-14.5 Tax liability****Authority:** IC 8-23-2-6**Affected:** IC 6-8.1-8-2; IC 8-23-10-7

Sec. 14.5. (a) Under IC 8-23-10-7, if the department is notified by the department of state revenue that a bidder is on the most recent tax warrant list, the department may not award a contract to that bidder until:

(1) the bidder provides to the department a statement from the department of state revenue that the bidder's delinquent tax liability has been satisfied; or

(2) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

(b) Failure of a bidder to meet the requirements of subsection (a) within seven (7) days after the opening of bids will be considered cause for rejection of the proposal under section 16(c)(1) of this rule. (*Indiana Department of Transportation; 105 IAC 11-3-14.5; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2542; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*)

**105 IAC 11-3-15 Corporations****Authority:** IC 8-23-2-6**Affected:** IC 8-23-10

Sec. 15. (a) The department will not enter into a contract or approve a subcontract with any corporation unless the corporation is registered and in good standing to do business in Indiana by the Indiana secretary of state. If the corporation does not have authorization to do business in Indiana at the time its bid is submitted, and if its bid is low and accepted, valid evidence must be furnished within fifteen (15) days after the opening of bids showing that the authorization has been acquired.

(b) Failure to become authorized to do business in Indiana and to submit valid evidence within the stated time will be considered cause for cancellation of the award, forfeiture of the bid bond, and a reduction in the bidder's qualification. At the discretion of the commissioner, the award may be made to the next eligible bidder, or the work may be readvertised, or all bids may be rejected and the work not readvertised. (*Indiana Department of Transportation; 105 IAC 11-3-15; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2197; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*)

**105 IAC 11-3-16 Rejection of proposals after opening****Authority:** IC 8-23-2-6**Affected:** IC 8-23-9-2; IC 8-23-9-13; IC 8-23-10-1; IC 8-23-10-6

Sec. 16. (a) A proposal opened and read will be subsequently rejected under the following conditions:

- (1) Failure to submit with the bid a properly executed bid bond.
  - (2) Failure to submit with the bid a properly executed performance bond.
  - (3) Failure to submit a valid power of attorney letter which authorizes the person to bind the surety to the bid bond and the performance bond.
  - (4) Failure to submit with the bid a properly executed noncollusion statement or noncollusion affidavit.
  - (5) When the bidder does not hold a valid certificate of qualification or when the bidder exceeds its bidding capacity.
  - (6) If the department cannot mathematically determine a bidder's unit price or lump sum price for each pay item in the proposal.
  - (7) If the department's calculation of the bidder's unit price or lump sum price is zero (0) or a negative amount.
  - (8) When no bids received on a contract are less than or equal to five percent (5%) above the engineer's estimate.
  - (9) When the bidder adds a provision reserving the right to accept or reject the award.
  - (10) If the bidder modifies or alters a provision in the contract documents.
  - (11) If the bidder is a trust and fails to disclose the identity of each of the following:
    - (A) Beneficiary of the trust.
    - (B) Settlor empowered to revoke or modify the trust.
- (b) The commissioner may reject any and all proposals for cause.
- (c) The commissioner reserves the right to reject any and all proposals for any reason, including, but not limited to, any of the following situations, if, in the sole personal judgment and discretion of the commissioner, the rejection is in the best interest of the state:
- (1) When the bidder fails to comply with this article.
  - (2) When there exists evidence of collusion among bidders.
  - (3) When the bidder has had involvement, in any way, in the design of the project or preparation of the plans or special provisions.
  - (4) When a situation has developed which makes it either impossible or not practical to proceed with the proposed work.
  - (5) When the bids are above but within five percent (5%) of the engineer's estimate.
  - (6) When the proposal is on a form other than the one furnished or authorized by the department for that bidding.
  - (7) If the proposal contains obviously unbalanced prices.

(8) If the bid is not completed either in ink or in type.  
 (9) When the highway contract form, proposal form, current contractual obligations, or other forms that appear in the proposal are not properly executed, signed, and notarized where required, subject to subsection (d).

(10) When the commissioner, in the exercise of the commissioner's sole personal judgment and discretion, determines, subsequent to the opening of bids, facts exist which would disqualify the low bidder or that such low bidder is not competent and responsible.

(d) When the documents in the proposal are omitted or improperly executed or signed, the department may allow the bidder to make the necessary corrections subsequent to the opening. Such corrections, if allowed, must be made within seven (7) calendar days after notification to the bidder of the irregularities. However, this provision does not apply to the situations which appear in subsection (a).

(e) Failure to execute the requested corrections within the seven (7) day period will be cause for the cancellation of the award, forfeiture of the bid bond, and a reduction in the bidder's qualification. In such event, the commissioner, in the exercise of the commissioner's sole personal judgment and discretion, may either award the contract to the next eligible bidder, reject all bids and readvertise for new bids, or reject all bids and not readvertise for new bids. (*Indiana Department of Transportation; 105 IAC 11-3-16; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2197; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2542; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

## ARTICLE 12. PROCUREMENT OF SUPPLIES AND SERVICES

*NOTE: IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*

- Rule 1. Definitions
- Rule 2. General Provisions
- Rule 3. Source Selection and Contract Formation
- Rule 4. Contract Terms

### Rule 1. Definitions

- 105 IAC 12-1-1 Applicability
- 105 IAC 12-1-2 "Award" defined
- 105 IAC 12-1-3 "Bid" defined
- 105 IAC 12-1-4 "Bid bond" defined
- 105 IAC 12-1-5 "Bidder" defined
- 105 IAC 12-1-6 "Change order" defined
- 105 IAC 12-1-7 "Commissioner" defined
- 105 IAC 12-1-8 "Contract" defined
- 105 IAC 12-1-9 "Contract modification" defined
- 105 IAC 12-1-10 "Contractor" defined
- 105 IAC 12-1-11 "Department" defined

105 IAC 12-1-12 “Designee” defined  
 105 IAC 12-1-13 “Established catalog price” defined  
 105 IAC 12-1-13.5 “Fuel” defined  
 105 IAC 12-1-14 “Invitation for bid” defined  
 105 IAC 12-1-15 “Performance bond” defined  
 105 IAC 12-1-16 “Person” defined  
 105 IAC 12-1-17 “Procurement” defined  
 105 IAC 12-1-18 “Proposal” defined  
 105 IAC 12-1-19 “Public works” defined  
 105 IAC 12-1-20 “Purchase description” defined  
 105 IAC 12-1-20.1 “Purchasing agent” defined  
 105 IAC 12-1-21 “Request for proposals” or “RFP” defined  
 105 IAC 12-1-22 “Responsible bidder” defined  
 105 IAC 12-1-23 “Responsive bidder” defined  
 105 IAC 12-1-24 “Services” defined  
 105 IAC 12-1-25 “Specifications” defined  
 105 IAC 12-1-26 “Supplies” defined

### 105 IAC 12-1-1 Applicability

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana Department of Transportation; 105 IAC 12-1-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-1-2 “Award” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 2. “Award” means the decision of the commissioner to accept a bid, subject to the execution and approval of a satisfactory contract and all other conditions required by the invitation to bid or by law. (*Indiana Department of Transportation; 105 IAC 12-1-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-1-3 “Bid” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 3. “Bid” means the offer of a bidder, submitted in the prescribed manner, to furnish all labor, equipment, and materials and to perform the specified work within the time prescribed. (*Indiana Department of Transportation; 105 IAC 12-1-3; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-1-4 “Bid bond” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 4. “Bid bond” means the approved form of security furnished with a bid to guarantee that the bidder

will enter into the contract if its bid is accepted. (*Indiana Department of Transportation; 105 IAC 12-1-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-1-5 “Bidder” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 5. “Bidder” means a person who submits a bid or proposal for a contract with the department. (*Indiana Department of Transportation; 105 IAC 12-1-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-1-6 “Change order” defined

Authority: IC 5-22-4-2; IC 8-23-2-6

Affected: IC 5-22

Sec. 6. “Change order” means a written order that:

- (1) is signed by the purchasing agent; and
- (2) directs the contractor to make changes that the contract authorizes the purchasing agent to order without the consent of the contractor.

(*Indiana Department of Transportation; 105 IAC 12-1-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-1-7 “Commissioner” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 7. “Commissioner” refers to the commissioner of the Indiana department of transportation or the designee of the commissioner. (*Indiana Department of Transportation; 105 IAC 12-1-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-1-8 “Contract” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 8. “Contract” means all types of agreements for the procurement of supplies or services. (*Indiana Department of Transportation; 105 IAC 12-1-8; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-1-9 “Contract modification” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 9. “Contract modification” means a written alteration:

(1) in a specification, delivery point, rate of delivery, period of performance, price, quantity, or another provision of a contract; and

(2) accomplished by mutual action of the parties to the contract.

(*Indiana Department of Transportation; 105 IAC 12-1-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-10 “Contractor” defined**

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 10. “Contractor” refers to a person who has a contract with the department. (*Indiana Department of Transportation; 105 IAC 12-1-10; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-11 “Department” defined**

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 11. “Department” means the Indiana department of transportation. (*Indiana Department of Transportation; 105 IAC 12-1-11; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-12 “Designee” defined**

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 12. “Designee” means an authorized representative of the commissioner. (*Indiana Department of Transportation; 105 IAC 12-1-12; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-13 “Established catalog price” defined**

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 13. “Established catalog price” refers to the price included in a catalog, price list, schedule, or other form that:

(1) is regularly maintained by the manufacturer or contractor;

(2) is either published or otherwise available for inspection by customers; and

(3) states prices at which sales are currently or were last made to a significant number of any category of buyers, or buyers constituting the general buying public, for the supplies or services involved.

(*Indiana Department of Transportation; 105 IAC 12-1-13; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-13.5 “Fuel” defined**

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 13.5. “Fuel” means gasoline, diesel fuel, compressed natural gas, electricity, or other product used to operate equipment or a vehicle in the department's fleet. (*Indiana Department of Transportation; 105 IAC 12-1-13.5; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-14 “Invitation for bid” defined**

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 14. “Invitation for bid” means all documents, whether attached or incorporated by reference, used for soliciting bids. (*Indiana Department of Transportation; 105 IAC 12-1-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-15 “Performance bond” defined**

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 15. “Performance bond” means the approved form of security, furnished and executed by the bidder and its surety or sureties, guaranteeing complete execution of the contract and all supplemental agreements pertaining thereto and for the payment of all legal debts pertaining to the furnishing of the supplies or services. The performance bond will be in effect after both parties have signed the contract and the contract has been approved by the attorney general of the state of Indiana. (*Indiana Department of Transportation; 105 IAC 12-1-15; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-16 “Person” defined**

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 16. “Person” includes an association, a business, a committee, a corporation, a fiduciary, an individual, a

joint stock company, a joint venture, a limited liability company, a partnership, a sole proprietorship, a trust, or another legal entity, organization, or group of individuals. (*Indiana Department of Transportation; 105 IAC 12-1-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-17 “Procurement” defined**

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 17. “Procurement” means the process of buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services, including description of requirements, selection or solicitation of sources, preparation and award of contract, and all phases of contract administration. (*Indiana Department of Transportation; 105 IAC 12-1-17; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-18 “Proposal” defined**

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 18. “Proposal” means an offer submitted on the prescribed proposal form to furnish the supplies or services at the prices quoted by the bidder on the proposal form. (*Indiana Department of Transportation; 105 IAC 12-1-18; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-19 “Public works” defined**

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 19. “Public works” means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property owned by or leased in the name of the state of Indiana; and it includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property. (*Indiana Department of Transportation; 105 IAC 12-1-19; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-20 “Purchase description” defined**

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 20. (a) “Purchase description” means the words used in an invitation for bid to describe the supplies or services to be purchased.

(b) The term includes specifications attached to, or made a part of, the invitation for bid. (*Indiana Department of Transportation; 105 IAC 12-1-20; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-20.1 “Purchasing agent” defined**

Authority: IC 5-22-4-2; IC 8-23-2-6

Affected: IC 5-22

Sec. 20.1. “Purchasing agent” means an individual authorized by the department to act as an agent for the department in the administration of the duties of the department. (*Indiana Department of Transportation; 105 IAC 12-1-20.1; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-21 “Request for proposals” or “RFP” defined**

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 21. “Request for proposals” or “RFP” means all documents, whether attached or incorporated by reference, used for soliciting proposals. (*Indiana Department of Transportation; 105 IAC 12-1-21; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-22 “Responsible bidder” defined**

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 22. “Responsible bidder” means a person who has:

- (1) the capability to fully perform the contract requirements; and
- (2) the integrity and reliability that will ensure good faith performance.

(*Indiana Department of Transportation; 105 IAC 12-1-22; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-1-23 “Responsive bidder” defined**

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 23. “Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the invitation for bid. (*Indiana Department of Transportation; 105 IAC 12-1-23; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 12-1-24 “Services” defined**

Authority: IC 8-23-2-6  
Affected: IC 5-22

Sec. 24. “Services” means the furnishing of labor, time, or effort by a person not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance. (*Indiana Department of Transportation; 105 IAC 12-1-24; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 12-1-25 “Specifications” defined**

Authority: IC 8-23-2-6  
Affected: IC 5-22

Sec. 25. (a) “Specifications” means a description of the physical or functional characteristics of a supply or service or the nature of a supply or service.

(b) The term includes a description of any requirements for inspecting, testing, or preparing a supply or service for delivery. (*Indiana Department of Transportation; 105 IAC 12-1-25; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 12-1-26 “Supplies” defined**

Authority: IC 8-23-2-6  
Affected: IC 5-22

Sec. 26. “Supplies” means any property, including equipment, goods, and materials. The term does not include an interest in real property. (*Indiana Department of Transportation; 105 IAC 12-1-26; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**Rule 2. General Provisions**

105 IAC 12-2-1	Purpose and construction
105 IAC 12-2-2	Application
105 IAC 12-2-3	Exceptions
105 IAC 12-2-4	Minority participation
105 IAC 12-2-5	Foreign corporations
105 IAC 12-2-6	Bid guarantees
105 IAC 12-2-7	Performance bonds
105 IAC 12-2-8	Specifications
105 IAC 12-2-9	Public notice
105 IAC 12-2-10	Notice to bidders
105 IAC 12-2-11	Qualifications and duties of bidders
105 IAC 12-2-12	Determinations of the department
105 IAC 12-2-13	Anticompetitive practices
105 IAC 12-2-14	Withdrawal of bids or proposals
105 IAC 12-2-15	Bid mistakes
105 IAC 12-2-16	Award; cancellation; rejection
105 IAC 12-2-17	Gifts

**105 IAC 12-2-1 Purpose and construction**

Authority: IC 8-23-2-6  
Affected: IC 4-13.4-2-3

Sec. 1. The purpose of this article is to establish rules to govern the procurement of supplies and services utilized by the department and to ensure fair competition among persons competing in the procurement process. (*Indiana Department of Transportation; 105 IAC 12-2-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 12-2-2 Application**

Authority: IC 8-23-2-6  
Affected: IC 4-13.4-2-3

Sec. 2. This article applies to the following:

- (1) Contracts for supplies.
- (2) Contracts for services.

(*Indiana Department of Transportation; 105 IAC 12-2-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 12-2-3 Exceptions**

Authority: IC 8-23-2-6  
Affected: IC 8-1-2-1; IC 20-12-0.5-1

Sec. 3. This article applies to every expenditure of public funds, regardless of their source, for the procurement of supplies or services, except for the following:

- (1) Public works contracts, including contracts for the construction and maintenance of highways.
- (2) Employment contracts.
- (3) Contracts between governmental bodies.
- (4) Contracts for which the department utilizes the procurement services provided by the Indiana department of administration.
- (5) Contracts for professional or consulting services.
- (6) Contracts involving the purchase, sale, or lease of real property.
- (7) Contracts with public utilities and municipally owned utilities.
- (8) Contracts with state educational institutions.
- (9) Contracts with the American Association of State Highway and Transportation Officials.

(*Indiana Department of Transportation; 105 IAC 12-2-3; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

**105 IAC 12-2-4 Minority participation**

Authority: IC 8-23-2-6  
Affected: IC 5-22

Sec. 4. The department will make good faith efforts to

solicit participation of minorities on every invitation for bid. (*Indiana Department of Transportation; 105 IAC 12-2-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-5 Foreign corporations**

**Authority:** IC 8-23-2-6

**Affected:** IC 23-1-49-1

Sec. 5. A foreign corporation must obtain a certificate of authority from the Indiana secretary of state, unless the activity required by the contract is exempt pursuant to IC 23-1-49-1. (*Indiana Department of Transportation; 105 IAC 12-2-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-6 Bid guarantees**

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22

Sec. 6. At the discretion of the department, a bidder may be required to submit with its bid a bid guarantee in the form of a certified check, a cashier's check, or a bid bond acquired from a surety company authorized to do business in Indiana. If required, the amount shall be specified in the invitation for bid. The bid guarantee of an unsuccessful bidder will be returned upon award of the contract. The bid guarantee of the successful bidder will be returned after the bidder enters into a contract with the department. (*Indiana Department of Transportation; 105 IAC 12-2-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-7 Performance bonds**

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22

Sec. 7. At the discretion of the department, a successful bidder may be required to submit a performance bond in the form of a certified check, a cashier's check, or a performance bond acquired from a surety company authorized to do business in Indiana. If required, the amount of the performance bond and the time that it must be submitted will be specified in the invitation for bid. Performance bonds will be returned, upon request, at the successful completion of the contract. (*Indiana Department of Transportation; 105 IAC 12-2-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-8 Specifications**

**Authority:** IC 8-23-2-6

**Affected:** IC 4-13.4-2-3

Sec. 8. Specifications used by the department shall not unduly restrict competition. (*Indiana Department of Transportation; 105 IAC 12-2-8; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-9 Public notice**

**Authority:** IC 8-23-2-6

**Affected:** IC 5-3-1; IC 5-22

Sec. 9. The department shall give notice in the manner required by IC 5-3-1. (*Indiana Department of Transportation; 105 IAC 12-2-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-10 Notice to bidders**

**Authority:** IC 8-23-2-6

**Affected:** IC 4-13.4-2-3

Sec. 10. (a) The department shall send invitations to bid by mail or as otherwise provided in this article to prospective bidders. Failure to give personal notice to a particular bidder will not invalidate a procurement under this article.

(b) The department shall schedule all notices given under this section so as to provide a reasonable amount of time for preparation and submission of responses after notification. (*Indiana Department of Transportation; 105 IAC 12-2-10; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-11 Qualifications and duties of bidders**

**Authority:** IC 8-23-2-6

**Affected:** IC 4-13.4-2-3

Sec. 11. (a) The department may request a bidder to submit information to show it is a responsible bidder. Failure of a bidder to submit information requested by the department shall be cause for the department to determine the bidder is not responsible.

(b) If the department determines that a bidder is not responsible, that determination shall be made in writing. (*Indiana Department of Transportation; 105 IAC 12-2-11; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-12 Determinations of the department**

**Authority:** IC 8-23-2-6

**Affected:** IC 4-13.4-2-3

Sec. 12. (a) The determinations of the department are final.

(b) A person aggrieved by a determination described in

subsection (a) may file a petition for judicial review of that determination in a court of competent jurisdiction. (*Indiana Department of Transportation; 105 IAC 12-2-12; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-13 Anticompetitive practices**

**Authority:** IC 8-23-2-6

**Affected:** IC 4-13.4-2-3

Sec. 13. If the commissioner determines that a bidder has participated in collusion or other anticompetitive practices, the bidder may be prohibited from bidding on contracts with the department for a period of time determined by the department. (*Indiana Department of Transportation; 105 IAC 12-2-13; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-14 Withdrawal of bids or proposals**

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22

Sec. 14. A bidder bearing proper authorization and identification may sign for and receive an unopened bid or proposal and withdraw the bid or proposal prior to the exact time for submission of bids or proposals. A bidder may modify its bid or proposal by withdrawing its bid or proposal as provided above and resubmitting a modified bid or proposal prior to the exact time for submission of bids or proposals. Neither the staff nor the facilities of the department will be available to assist a bidder desiring to make modifications. It is the bidder's responsibility to make all modifications. (*Indiana Department of Transportation; 105 IAC 12-2-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-15 Bid mistakes**

**Authority:** IC 8-23-2-6

**Affected:** IC 4-13.4-2-3

Sec. 15. (a) After the opening of bids, the department shall examine all bids for mistakes. If the department finds an obvious clerical mistake in a bid, the department will correct the mistake.

(b) After the award of a contract, the department may:

- (1) rescind an award;
- (2) rescind a contract; or
- (3) modify a contract;

when the department finds a mistake was mutual or unilaterally made by the bidder, but was so obvious that the department should have found the mistake.

(c) The department will not award a contract to a bidder if, due to a material mistake, it would be unconscionable to hold the bidder to its bid.

(d) Changes in bids shall not be permitted if prejudicial to fair competition.

(e) The department will document as a part of the contract file any changes or modifications made pursuant to this section. (*Indiana Department of Transportation; 105 IAC 12-2-15; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-2-16 Award; cancellation; rejection**

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22

Sec. 16. (a) The department reserves the right to accept or reject any or all bids, or any part thereof, and to award the items separately or all to one (1) bidder. A bidder bidding on an all or none basis must state so in its bid.

(b) Prior to the opening of bids, the department may cancel an invitation for bid in whole or in part, when it is in the best interest of the department. Reasons for cancellation include, but are not limited to:

- (1) the department no longer requires the supplies or services;
- (2) the department no longer can reasonably expect to fund the procurement; or
- (3) proposed amendments to the invitation for bid would be of such magnitude that a new invitation for bid is desirable.

(c) After the opening of bids, but prior to award of a contract, the department may reject all bids, in whole or in part, when it is in the best interest of the department. Reasons for rejection include, but are not limited to:

- (1) the department no longer requires the supplies or services;
- (2) ambiguous or otherwise inadequate specifications were part of the invitation for bid;
- (3) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (4) all bids received contain unreasonable prices; or
- (5) there is reason to believe that the bids or proposals may not have been independently prepared.

(d) When the department cancels an invitation for bid, the department will send notice to each person who submitted a bid, stating the reason for cancellation. The reason for cancellation shall be made part of the procurement file and shall be available for public inspection.

(e) When two (2) or more bids are equal, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be

witnessed by at least three (3) persons, and the contract file shall contain the names and addresses of the witnesses. (*Indiana Department of Transportation; 105 IAC 12-2-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-2-17 Gifts

**Authority:** IC 8-23-2-6

**Affected:** IC 4-13.4-2-3

Sec. 17. A bidder or contractor shall not offer or give a gift, including, but not limited to, money, goods, services, meals, and entertainment to any officer, employee, section, division, district, or combination thereof of the department if the gift has a fair market value of ten dollars (\$10) or more. Exceptions to this provision must be approved, in writing, by the department's commissioner. (*Indiana Department of Transportation; 105 IAC 12-2-17; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### Rule 3. Source Selection and Contract Formation

105 IAC 12-3-1	Purchases less than \$2,500
105 IAC 12-3-2	Purchases less than \$75,000
105 IAC 12-3-3	Purchases less than \$25,000 ( <i>Repealed</i> )
105 IAC 12-3-4	Competitive sealed bids
105 IAC 12-3-5	Competitive sealed proposal or request for proposal
105 IAC 12-3-6	General Services Administration
105 IAC 12-3-7	Open-end contracts
105 IAC 12-3-8	Special procurements
105 IAC 12-3-9	Sole source procurement
105 IAC 12-3-10	Fuel contracts

### 105 IAC 12-3-1 Purchases less than \$2,500

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22

Sec. 1. (a) A procurement with an estimated cost not exceeding two thousand five hundred dollars (\$2,500) may be made under the procedure outlined in this section.

(b) Bids shall be invited from at least one (1) person known to deal in the supplies or services to be procured.

(c) The purchase description and date bids are due shall be communicated to the person invited to bid. Means of communication may include mail, telephone, electronic mail, or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If a satisfactory bid is received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. (*Indiana Department of Transportation; 105 IAC 12-3-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; errata filed Sep 14, 1994, 2:50 p.m.: 18 IR 268; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-3-2 Purchases less than \$75,000

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22

Sec. 2. (a) A procurement with an estimated cost not exceeding seventy-five thousand dollars (\$75,000) may be made under the procedure outlined in this section.

(b) Bids shall be invited from at least three (3) persons known to deal in the supplies or services to be procured.

(c) The purchase description and the date bids are due shall be communicated to the persons invited to bid. Means of communication may include mail, telephone, electronic mail, or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper, advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If satisfactory bids are received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. (*Indiana Department of Transportation; 105 IAC 12-3-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-3-3 Purchases less than \$25,000 (*Repealed*)

Sec. 3. (*Repealed by Indiana Department of Transportation; filed Oct 3, 2001, 9:35 a.m.: 25 IR 372*)

### 105 IAC 12-3-4 Competitive sealed bids

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22-18-2

Sec. 4. (a) A contract for supplies or services may be awarded under the procedure outlined in this section regardless of the estimated dollar value.

(b) An invitation for bid under this section shall be issued to potential bidders and must include the following:

- (1) A purchase description.
- (2) All contractual terms and conditions that apply to the purchase.
- (3) A statement of the evaluation criteria that will be used, including any of the following:
  - (A) Inspection.
  - (B) Testing.
  - (C) Quality.
  - (D) Workmanship.
  - (E) Delivery.
  - (F) Suitability for a particular purpose.
- (4) The time, date, and place for opening of bids.
- (5) A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with rules or policies of the governmental body.
- (6) A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

(c) Bids shall be publicly opened at the time and place designated in the invitation for bid in the presence of one (1) or more witnesses.

(d) A contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder. (*Indiana Department of Transportation; 105 IAC 12-3-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-3-5 Competitive sealed proposal or request for proposal**

**Authority:** IC 5-22-4-2; IC 8-23-2-6  
**Affected:** IC 5-3-1; IC 5-22

Sec. 5. (a) When a purchasing agent makes a written determination that the use of competitive sealed bidding is either not practicable or not advantageous to the governmental body, the purchasing agent may award a contract using the procedure provided by this section instead of competitive sealed bidding.

(b) The purchasing agent shall solicit proposals through a request for proposals, which must include the following:

- (1) A statement concerning the relative importance of price and the other evaluation factors.
- (2) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.

(c) Public notice shall be given in the manner required by IC 5-3-1.

(d) Proposals shall be opened at the date and time specified in the request for proposals.

(e) The department may conduct discussions with persons submitting proposals for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Persons submitting proposals must be accorded fair and equal treatment with respect to the opportunity for discussion and revision of proposals. In conducting discussions, the department shall not disclose information derived from proposals submitted by competing persons.

(f) After identification of the responsible offer or whose proposal appears to be the most advantageous to the department, the department will enter into contract preparation activities with the bidder. If at any time the contract preparation activities are judged to be ineffective, the department may cease all activities with that bidder and begin contract preparation activities with the next highest ranked bidder, and the process may continue until a contract is executed. The department reserves the right to cease all contract preparation activities at any time and to reject all proposals, if such action is determined to be in the best interest of the department. (*Indiana Department of Transportation; 105 IAC 12-3-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-3-6 General Services Administration**

**Authority:** IC 8-23-2-6  
**Affected:** IC 4-13.4-2-3

Sec. 6. The commissioner may authorize a procurement to a person at prices equal to or less than the prices contained in current federal supply service schedules established by the General Services Administration. (*Indiana Department of Transportation; 105 IAC 12-3-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

#### **105 IAC 12-3-7 Open-end contracts**

**Authority:** IC 8-23-2-6  
**Affected:** IC 5-22

Sec. 7. (a) Procurement of various types of aggregates and bituminous materials may be awarded under the procedure outlined in this section.

(b) The department will solicit unit prices for the various types of aggregates and bituminous materials in the invitation for bid. Prices submitted in bids shall be binding upon the bidder for the time period specified in the invitation for bid.

(c) A procurement of a specified quantity of material will be awarded to the bidder whose relative cost per unit is the lowest, using the following formula:

$$C = P + (2 \times D \times M)$$

- Where:
- P = Price quoted per unit.
  - D = Haul distance from supplier to the department worksite.
  - M = Cost per mile as determined by the department.
  - C = Relative cost per unit.

(d) The department may continue to procure materials from the bids submitted for the period specified in the invitation for bid. (*Indiana Department of Transportation; 105 IAC 12-3-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-3-8 Special procurements

Authority: IC 5-22-4-2; IC 8-23-2-6  
Affected: IC 5-22

Sec. 8. (a) Notwithstanding any other provision of this article, a purchasing agent may make a purchase without soliciting bids or proposals under any of the following circumstances:

- (1) When there exists a unique opportunity to obtain supplies or services at a substantial savings to the department.
  - (2) When the market structure requires the department to inspect and bid on the supplies to be procured.
  - (3) When only one (1) source meets the department's reasonable requirements for the procurement of data processing contracts or license agreements involving:
    - (A) software programs; or
    - (B) supplies or services.
  - (4) When the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement and only one (1) source meets the department's reasonable requirements.
  - (5) When there exists, under emergency conditions, a threat to public health, welfare, or safety.
  - (6) When the department has solicited for a procurement and has not received a responsive bid from a responsible bidder.
  - (7) When procurement of the required supplies or services would seriously impair the functioning of the department.
  - (8) For the evaluation of supplies or a system containing supplies to obtain functional information or comparative data or for any other purpose that in the judgment of the commissioner may advance the long term competitive position of the state.
  - (9) For the procurement of copyrighted materials to be used, provided, or distributed by the department.
- (b) A special procurement must be made with such

competition as is practicable under the circumstances.

(c) A purchasing agent shall maintain the contract records for a special purchase in a separate file. The contract file shall include a written determination of a basis for the special purchase and the selection of the particular contract.

(d) A special procurement must be approved by the commissioner. (*Indiana Department of Transportation; 105 IAC 12-3-8; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-3-9 Sole source procurement

Authority: IC 8-23-2-6  
Affected: IC 4-13.4-2-3

Sec. 9. A contract may be awarded for a supply or service without competition when the commissioner has determined that there is only one (1) source for the required supply or service. A copy of the determination shall be made a part of the contract file. (*Indiana Department of Transportation; 105 IAC 12-3-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-3-10 Fuel contracts

Authority: IC 8-23-2-6  
Affected: IC 4-13.4-2-3

Sec. 10. (a) Procurement of fuel may be made under the procedure outlined in this section.

(b) The department may procure fuel for an individual vehicle or piece of equipment in the same manner that a reasonable person would procure the same quantity of fuel. (*Indiana Department of Transportation; 105 IAC 12-3-10; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### Rule 4. Contract Terms

105 IAC 12-4-1	Price adjustments
105 IAC 12-4-2	Equipment rental or lease agreements
105 IAC 12-4-3	Equipment rental or lease with option to purchase
105 IAC 12-4-4	Additions
105 IAC 12-4-5	Modifications and change orders
105 IAC 12-4-6	Option to renew

### 105 IAC 12-4-1 Price adjustments

Authority: IC 8-23-2-6  
Affected: IC 5-22

Sec. 1. The department may enter into a contract that provides for price adjustments under the conditions defined in the invitation for bid. (*Indiana Department of Transportation*)

tion; 105 IAC 12-4-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)

### 105 IAC 12-4-2 Equipment rental or lease agreements

**Authority:** IC 8-23-2-6

**Affected:** IC 4-13.4-2-3; IC 8-23-14

Sec. 2. (a) The department may enter into a rental or lease agreement under the following circumstances:

- (1) When the total cost of the proposed rental over the anticipated period of use of the equipment does not exceed the original cost of the equipment to be rented.
- (2) When the rent to be paid by the department does not exceed the amount listed in the most recent issue of the "Compilation of Rental Rates for Construction Equipment", as prepared and distributed by the Associated Equipment Distributors.

(b) In the case of an emergency, if it is impossible for the department to procure the necessary equipment by rental under subsection (a), the department may rent equipment subject to the approval of the state budget committee. (*Indiana Department of Transportation; 105 IAC 12-4-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-4-3 Equipment rental or lease with option to purchase

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22

Sec. 3. A contract for rental or lease may contain an option to purchase under the following circumstances:

- (1) Exercise of the option shall be at the sole discretion of the commissioner.
- (2) The option must be part of the invitation for bid. (*Indiana Department of Transportation; 105 IAC 12-4-3; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-4-4 Additions

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22

Sec. 4. (a) If a bidder inserts contract terms or bids on items not listed in the invitation for bid, the department will treat the additional material as a proposal for addi-

tion to the contract and may:

- (1) find the bidder to be nonresponsive;
- (2) permit the bidder to withdraw the proposed additions to the contract; or
- (3) accept any of the proposed additions to the contract.

(b) The department will not accept proposed additions to the contract that are prejudicial to the interest of the department or fair competition. The department's decision to permit a change will be made in writing. (*Indiana Department of Transportation; 105 IAC 12-4-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-4-5 Modifications and change orders

**Authority:** IC 8-23-2-6

**Affected:** IC 4-13.4-2-3

Sec. 5. The department may execute contract modifications and issue change orders on a contract. A contract modification or change order may not materially change the terms of the contract. (*Indiana Department of Transportation; 105 IAC 12-4-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

### 105 IAC 12-4-6 Option to renew

**Authority:** IC 8-23-2-6

**Affected:** IC 5-22

Sec. 6. A contract may contain an option to renew or extension of its terms, for a specified period of time, under the following circumstances:

- (1) Exercise of the option is at the discretion of the department.
- (2) The provision must be included in the solicitation.
- (3) A contract for supplies may be entered into for a period not to exceed four (4) years.
- (4) Performance obligations for succeeding fiscal years shall be subject to availability of funds for each year.
- (5) The invitation for bid and contract specify the exact payment terms.

(*Indiana Department of Transportation; 105 IAC 12-4-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1510; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; filed Oct 3, 2001, 9:35 a.m.: 25 IR 372; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)