

TITLE 80 STATE FAIR COMMISSION

ARTICLE 1. PROCUREMENT OF PROPERTY

Rule 1. Definitions

80 IAC 1-1-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The definitions in this rule apply throughout this article unless a more specific definition is given for a particular rule. *(State Fair Commission; 80 IAC 1-1-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-1-2 “Business” defined

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 2. “Business” means any corporation, partnership, limited liability company, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity. *(State Fair Commission; 80 IAC 1-1-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-1-3 “Change order” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. “Change order” means a written order that is signed by the procurement officer and directs the contractor to make changes, which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor. *(State Fair Commission; 80 IAC 1-1-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-1-4 “Commission” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. “Commission” means the Indiana state fair commission. *(State Fair Commission; 80 IAC 1-1-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-1-5 “Construction, commission works, and improvement” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. “Construction”, “commission works”, “improvement” means the process of building, altering, repairing, improving, or demolishing any structure of building or other improvement of any kind to any real property owned by or leased in the name of the commission, including the preparation of drawings, plans, and specifications thereof, and the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property. *(State Fair Commission; 80 IAC 1-1-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-1-6 “Contract” defined

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 6. "Contract" means all types of agreements, regardless of what they may be called, for the procurement of supplies. (*State Fair Commission; 80 IAC 1-1-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-7 "Contract modification" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. "Contract modification" means any written alterations in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract, which alteration is accomplished by mutual action of the parties to the contract. (*State Fair Commission; 80 IAC 1-1-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-8 "Contractor" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 8. "Contractor" means any person having a contract with the commission. (*State Fair Commission; 80 IAC 1-1-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-9 "Cost reimbursement contract" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. "Cost reimbursement contract" means a contract under which a contractor is entitled to receive reimbursement for costs which are allowable and allocable in accordance with the contract terms and the provisions of this article and a fee, if any. (*State Fair Commission; 80 IAC 1-1-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-10 "Data" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 10. "Data" means any recorded information, regardless of its form or characteristics. (*State Fair Commission; 80 IAC 1-1-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-11 "Data processing" defined

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 11. "Data processing" means resources and technologies associated with the fields of information processing, office automation, and telecommunications facilities and networks. (*State Fair Commission; 80 IAC 1-1-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-12 "Designee" defined (Repealed)

Sec. 12. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

80 IAC 1-1-13 "Executive director" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 13. "Executive director" means the chief administrative officer of the commission. (*State Fair Commission; 80 IAC 1-1-13; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-14 "Established catalog price" defined

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 14. "Established catalog price" means the following:

(1) The price included in a catalog, price list, schedule, or the form that is regularly maintained by the manufacturer or contractor.

(2) The price either published or otherwise available for inspection by customers.

(3) The price 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 involved.

(*State Fair Commission; 80 IAC 1-1-14; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-15 "Invitation for bids" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 15. "Invitation for bids" means all documents, whether attached or incorporated by reference, used for the purpose of soliciting bids. (*State Fair Commission; 80 IAC 1-1-15; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-16 "Person" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 16. "Person" means any business, individual, committee, or other organization or group of individuals. (*State Fair Commission; 80 IAC 1-1-16; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-17 "Procurement" defined

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 17. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies and includes functions that pertain to the obtaining of any supply, including the following:

(1) Description of requirements.

(2) Selection or solicitation of sources.

(3) Preparation and award of contract.

(*State Fair Commission; 80 IAC 1-1-17; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-18 "Procurement officer" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 18. "Procurement officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect to those contracts. (*State Fair Commission; 80 IAC 1-1-18; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-19 “Public funds” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 19. “Public funds” means funds created by the commission's accounting system and includes the state fair fund administered by the commission and subject to audit by the state board of accounts. (*State Fair Commission; 80 IAC 1-1-19; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-20 “Purchase description” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 20. “Purchase description” means the words used in a solicitation to describe the supplies to be purchased and includes specifications attached to, or made a part of, the solicitations. (*State Fair Commission; 80 IAC 1-1-20; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-21 “Request for proposals” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 21. “Request for proposals” means all documents, whether attached or incorporated by reference, used for soliciting proposals. (*State Fair Commission; 80 IAC 1-1-21; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-21.5 “Responsible bidder” defined

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 21.5. “Responsible bidder” means a person who has:

- (1) the capability to perform fully the contract requirements; and
- (2) the integrity and reliability that will ensure good faith performance.

(*State Fair Commission; 80 IAC 1-1-21.5; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-22 “Responsive bidder” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 22. “Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the invitation for bids. (*State Fair Commission; 80 IAC 1-1-22; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-23 “Services” defined

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 23. “Services” means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than printed documents or other items that are merely incidental to the required performance. (*State Fair Commission; 80 IAC 1-1-23; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-24 "Specifications" defined

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 24. "Specifications" means any description of the physical or functional characteristics of a supply or the nature of a supply and may include a description of any requirements for inspecting, testing, or preparing a supply or construction item for delivery. (*State Fair Commission; 80 IAC 1-1-24; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-1-25 "Supplies" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 25. "Supplies" means all property, including, but not limited to, equipment, materials, and goods but excluding real property. (*State Fair Commission; 80 IAC 1-1-25; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 2. General Provisions

80 IAC 1-2-1 Purpose; construction

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. This article is to be construed and applied to promote the following underlying purposes and policies:

- (1) To simplify and clarify the procedures governing procurement by the state fair commission.
- (2) To provide for increased public confidence in the procurement procedures followed by the state fair commission.
- (3) To ensure fair and equitable treatment of all persons who deal with the procurement system covered and utilized by the state fair commission.
- (4) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of the public funds of the state fair commission.
- (5) To foster effective broad-based competition within the free enterprise systems.
- (6) To provide safeguards for the maintenance of a procurement system of quality and integrity.

(*State Fair Commission; 80 IAC 1-2-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-2-2 Application

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 2. (a) This article applies to the following:

- (1) Contracts for supplies.
- (2) Contracts for insurance and administrative services for insurance.

(b) This article does not apply to personal or professional service contracts. (*State Fair Commission; 80 IAC 1-2-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-2-3 Application exceptions

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 3. This article applies to every expenditure of public funds, regardless of their source, for the procurement of supplies

except for the following:

- (1) Collective bargaining agreements between the commission and its employees.
- (2) Employment agreements.
- (3) Investment of public funds.
- (4) Contracts between governmental bodies and bodies corporate and politic.
- (5) Contracts regarding real property of the commission.
- (6) Contracts regarding entertainment.

(State Fair Commission; 80 IAC 1-2-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 1-2-4 Good faith requirement

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. All parties involved in a negotiation, performance, or administration of contracts covered by this article shall act in good faith. *(State Fair Commission; 80 IAC 1-2-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-2-5 Grants, gifts, bequests, and other cooperative agreements; conflicting provisions

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. Notwithstanding the provisions of this article, the commission shall comply with the terms and conditions of any grant, gift, bequest, or other cooperative agreement if noncompliance with those terms and conditions would invalidate the grant, gift, bequest, or other cooperative agreement. *(State Fair Commission; 80 IAC 1-2-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 433; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-2-6 Retention of written determinations

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. Written determinations required by this article shall be retained in the appropriate official contract file of the state fair commission. *(State Fair Commission; 80 IAC 1-2-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 433; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-2-7 Public access to procurement information

Authority: IC 15-1.5-2-8

Affected: IC 5-14-1; IC 15-1.5-2

Sec. 7. Except as otherwise provided by law, procurement information is public information subject to public inspection under the provisions of IC 5-14-1. *(State Fair Commission; 80 IAC 1-2-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 433; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-2-8 Preference given to Indiana businesses (Repealed)

Sec. 8. *(Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375)*

Rule 3. Purchasing Organization

80 IAC 1-3-1 Authority; duties (Repealed)

Sec. 1. *(Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375)*

80 IAC 1-3-2 Procurement department

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 2. (a) There is established within the commission a procurement department. All procurement functions retained by each senior manager will be conducted in conformance with this article. Except as otherwise specifically provided in this article, the procurement department shall do the following:

(1) Procure or supervise the procurement of all supplies for the commission and establish internal policy for separate functions of the senior managers.

(2) Exercise general supervision over all inventories of supplies retained by the commission.

(3) Establish and maintain programs for the inspection, testing, and acceptance of supplies procured under this article.

(b) The procurement department may enter into agreements with the procurement division of the state of Indiana to make procurements through an established quantity procurement agreement (QPA) and the federal General Services Agency (GSA) processes, where applicable and cost effective. *(State Fair Commission; 80 IAC 1-3-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 433; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

Rule 4. Specifications

80 IAC 1-4-1 Duties of the commission (Repealed)

Sec. 1. *(Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375)*

80 IAC 1-4-2 Duties of the procurement department

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 2. The procurement department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies. *(State Fair Commission; 80 IAC 1-4-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 434; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-4-3 Relationship with using departments

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. The procurement department shall obtain expert advice and assistance from personnel of the using department(s) in the development of specifications. *(State Fair Commission; 80 IAC 1-4-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 434; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-4-4 Maximum competition

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. The procurement department shall maintain specifications that must:

(1) promote overall economy for the purposes intended; and

(2) encourage competition in satisfying the commission's needs.

(State Fair Commission; 80 IAC 1-4-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 434; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 1-4-5 Disposable plastic products; procurement

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. (a) As used in this section, "biodegradation" means the conversion of all constituents of:

- (1) a plastic; or
- (2) a hybrid material containing plastic as a major component;

into miscellaneous component parts by the microbial action of fungi and bacteria upon natural materials such as cornstarch.

(b) As used in this section, "chemical degradation" means the conversion of all constituents of:

- (1) a plastic; or
- (2) a hybrid material containing plastic as a major component;

into miscellaneous component parts through the chemical reactions of additives such as auto-oxidants and the environment with the plastic.

(c) As used in this section, "degradable" means capable of being broken down by one (1) or more of the following degradation processes:

- (1) Biodegradation.
- (2) Photodegradation.
- (3) Chemical degradation.

(d) As used in this section, "photodegradation" means the conversion of all constituents of:

- (1) a plastic; or
- (2) a hybrid material containing plastic as a major component;

into miscellaneous component parts through the physical breakdown of the plastic product upon sufficient exposure to ultraviolet radiation.

(e) As used in this section, "refuse bag" means a disposable [*sic.*] plastic bag that is designed to hold garbage, grass clippings, fallen leaves, or other refuse. The term includes a disposable plastic bag this [*sic., that*] is designed to be placed inside and to catch the refuse deposited in a rigid refuse receptacle.

(f) When procuring any disposable plastic products, including refuse bags, the procurement department shall procure disposable plastic products that are degradable if:

- (1) degradable products are available at the time of the procurement;
- (2) it is economically feasible to procure degradable products;
- (3) the procurement of degradable products is not inappropriate because of:
 - (A) federal regulations or policy in matters involving the federal government; or
 - (B) the special requirements of scientific uses;
- (4) the degradable product to be procured is economically and functionally the equivalent of disposable plastic products that:
 - (A) meet applicable specifications; and
 - (B) are not degradable; and
- (5) the degradable product to be procured is, in the determination of the executive director, a type of product for which the use of degradable materials is appropriate based upon:
 - (A) the functional use of the product; and
 - (B) whether the product will probably be recycled or disposed of in a final disposal facility.

(*State Fair Commission; 80 IAC 1-4-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 434; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-4-6 Recycled paper products

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 6. The procurement department may procure recycled paper products if:

- (1) recycled paper products are available at the time of a procurement;
- (2) it is economically feasible to procure recycled paper products; and

(3) the procurement of recycled paper products is not inappropriate because of:

(A) federal regulations or policy in matters involving the federal government; or

(B) the special requirements of scientific uses.

(State Fair Commission; 80 IAC 1-4-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 435; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

Rule 5. Source Selection and Contract Formation

80 IAC 1-5-1 Methods of source selection

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 4-13-1-17; IC 15-1.5-2

Sec. 1. Contracts for supplies exceeding seventy-five thousand dollars (\$75,000), administrative services for group insurance, or insurance authorized under IC 4-13-1-17 (if the annual premium exceeds five thousand dollars (\$5,000)) must be awarded under section 3 of this rule unless another method is authorized under this rule. *(State Fair Commission; 80 IAC 1-5-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 435; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-5-2 Contracts for supplies

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 2. Contracts for supplies which exceed ten thousand dollars (\$10,000) but do not exceed seventy-five thousand dollars (\$75,000) must be awarded under one (1) of the following:

(1) Section 3 of this rule.

(2) Section 4 of this rule.

(3) Section 5 of this rule.

(4) Section 8 of this rule.

(5) Section 9 of this rule.

The executive director shall determine which method shall be used. *(State Fair Commission; 80 IAC 1-5-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 435; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-5-3 Sealed bidding

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 3. (a) The following procedure shall be followed by the procurement department in awarding contracts by sealed bidding:

(1) An invitation for bids shall be issued and must include the following:

(A) A purchase description.

(B) All contractual terms and conditions applicable to the procurement.

(C) A statement of the evaluation criteria to be used, including criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, and any requirement imposed under section 14 of this rule.

(D) The time, date, and place for the opening of bids.

(E) A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility.

(F) A statement concerning the conditions under which a bid proposal may be canceled or rejected in whole or in part as specified under section 11.5 of this rule.

(2) Public notice shall be given in the manner required under section 12 of this rule.

(3) Bids shall be opened publicly in the presence of one (1) or more witnesses at the time, date, and place designated in the invitation for bids.

(4) Bids shall be:

- (A) unconditionally accepted without alteration or correction, except as provided in subsections (e) through (g); and
- (B) evaluated based on the requirements set forth in the invitation for bids.

(5) A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

(b) The following information must be maintained by the procurement department and subject to public inspection after bid opening:

- (1) The name of each bidder.
- (2) The amount of each bid.

(c) Those criteria that will affect the bid price and be considered in the evaluation for an award must be objectively measurable such as discounts, transportation costs, and total or life cycle costs.

(d) The only criteria that may be used in bid evaluation are those specified in the invitation for bids.

(e) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such mistakes, shall be permitted at the discretion of the executive director. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the commission or fair competition shall not be permitted.

(f) If a bidder inserts contract terms or bids on items not specified in the invitation for bids, the procurement department shall treat the additional material as a proposal for addition to the contract and may:

- (1) find the bidder to be nonresponsive;
- (2) permit the bidder to withdraw the proposed additions to the contract in order to meet the requirements and criteria set forth in the invitation for bids; or
- (3) accept any of the proposed additions to the contract, subject to subsection (g).

(g) The procurement department may not accept proposed additions to the contract that are prejudicial to the interest of the commission or fair competition. (*State Fair Commission; 80 IAC 1-5-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 435; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-5-4 Sealed bids (two step)

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 4. The executive director may utilize a two (2) step sealed bid process by requiring that bidders initially submit unpriced sealed offers in response to an invitation to bid identical to that required in section 3 of this rule excepting those provisions that relate to price. Submission of priced sealed bids may then be restricted to only those offerors whose offer qualified under the criteria set forth in the original invitation. (*State Fair Commission; 80 IAC 1-5-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 436; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3369; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-5-5 Request for proposals

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 5. (a) The following procedure shall be followed by the procurement department in awarding contracts by request for proposals:

(1) Proposals shall be solicited through a request for proposals, which must include the following:

- (A) The factors or criteria that will be used in evaluating the proposals, including any requirement under section 14 of this rule.
- (B) A statement concerning the relative importance of price and the other evaluation factors.
- (C) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility, which may be imposed in accordance with this article.
- (D) A statement concerning whether discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

(2) Public notice shall be given in the manner required in section 12 of this rule.

(3) A register of proposals shall be prepared and must be open for public inspection after contract award. The register of proposals must contain the following:

(A) A copy of the request for proposals.

(B) The listing of all proposals received, including the following:

(i) The names and addresses of all offerors.

(ii) The dollar amount of each offer.

(iii) The name of the successful offeror and the dollar amount of the offer.

(C) The basis on which the award was made.

(D) The entire contents of the contract file except for proprietary information, which may have been included with an offer, such as trade secrets, manufacturing processes, and financial information which was not required to be made available for public inspection by the terms of the request for proposals itself.

(4) If provided in the request for proposals or determined by the executive director to be desirable, discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements or correcting errors or omissions in the proposal.

(5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the commission, taking into consideration price and other evaluation factors set forth in the request for proposals.

(b) Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. In conducting discussions, there must be no disclosure of any information derived from proposals submitted by competing offerors.

(c) The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for the proposals. (*State Fair Commission; 80 IAC 1-5-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 436; errata, 15 IR 1024; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3370; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-5-6 Competitive unsealed bids (Repealed)

Sec. 6. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

80 IAC 1-5-7 Small purchases

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 7. (a) A procurement with an estimated cost of five thousand dollars (\$5,000) and not exceeding ten thousand dollars (\$10,000) may be made under small purchases procedures outlined in this section.

(b) Small purchases, as defined under subsection (a), shall be processed under the following provisions:

(1) Prior to award of purchase, quotations for the desired supplies, including purchase description, price(s), and terms or conditions, as appropriate, must be solicited from no less than three (3) potential bidders of such supplies.

(2) The appropriate senior manager or procurement department shall award a contract to the bidder submitting the lowest bid price that meets the specifications and who is responsible and has the ability to comply with all of the provisions of the contract.

(c) Corrections or withdrawal of inadvertently erroneous bids shall be permitted prior to award of any bid. However, upon receipt of a proposed bid, any changes in bid prices or other provisions of bids prejudicial to the interest of the commission or fair competition shall not be permitted and shall be cause for the disqualification of that bid.

(d) If a bidder inserts contract terms or bids on items not specified in the quotation or includes additional unsolicited items, the procurement department shall treat the additional material as a proposal for addition to the contract and may:

(1) find the bidder to be nonresponsive;

(2) permit the bidder to withdraw the proposed additions to the contract in order to meet items specified in subsection (b)(2); or

(3) accept any of the proposed additions to the contract subject to subsection (e).

(e) The procurement department or senior manager may not accept proposed additions to the contract that are prejudicial to the interests of the commission or fair competition.

(f) The procurement department or senior manager may reject all quotations received.

(g) If no responsive and responsible quotations are received for an item, the procurement department is authorized to procure the item on the open market without further invitations for quotes.

(h) Procurement requirements may not be artificially divided so as to constitute a small purchase under this section. (*State Fair Commission; 80 IAC 1-5-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 438; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3370; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-5-8 Sole source procurement

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 8. A contract may be awarded for a supply without competition when the executive director has determined that there is only one (1) source for the required supply. A copy of such determination shall be made a part of the contract file. Any such proposed contract having an expenditure value exceeding fifty thousand dollars (\$50,000), along with a copy of the executive director's determination, shall be presented to the commission. (*State Fair Commission; 80 IAC 1-5-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 439; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3371; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-5-9 Special procurements

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 4-13-1-17; IC 15-1.5-2

Sec. 9. (a) Notwithstanding any other provision of this article, the executive director may make, or authorize the procurement department to make, special procurements:

(1) when there exists, under emergency conditions, a threat to public health, welfare, or safety;

(2) when there exists a unique opportunity to obtain supplies at a substantial savings to the commission;

(3) when the market structure requires the commission to inspect and bid on the supplies to be procured;

(4) for the procurement of data processing contracts or license agreements for:

(A) software programs; or

(B) supplies, when only one (1) source meets the procurement department's or senior manager's reasonable requirements;

(5) for contracts for insurance authorized under IC 4-13-1-17 if the annual premium does not exceed five thousand dollars (\$5,000);

(6) when the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement and only one (1) source meets the using department's reasonable requirements;

(7) when procurement of the required supplies under another section of this rule would seriously impair the function of the using department;

(8) when the procurement department has solicited for a procurement under another section of this rule and has not received a responsive offer;

(9) when the procurement is estimated to cost more than one hundred dollars (\$100) and less than five thousand dollars (\$5,000); or

(10) when the time periods for performance as determined by the executive director would be seriously impaired by bidding, so long as at least two (2) price quotes are obtained.

(b) Special procurements must be made with such competition as is practicable under the circumstances.

(c) A written determination of the basis for the special procurement and for the selection of the particular contractor must be included in the contract file. Contract records for special procurements shall be maintained in a separate file in the procurement department and are subject to annual audit by the state board of accounts. (*State Fair Commission; 80 IAC 1-5-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 439; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3371; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-5-10 Approval of contracts

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 10. (a) The executive director, on behalf of the commission, may approve contracts that:

(1) are less than ten thousand dollars (\$10,000); or

(2) are special procurements meeting the terms of section 9(a)(1) or 9(a)(7) of this rule, where expediency and timeliness are essential.

(b) The executive director, jointly with the chairman of the commission, shall approve contracts that have a value in excess of ten thousand dollars (\$10,000) or more and do not exceed fifty thousand dollars (\$50,000) subject to the review and approval of the attorney general's office in regards to form and legality.

(c) The commission shall approve contracts that:

(1) exceed fifty thousand dollars (\$50,000); and

(2) are approved by the attorney general's office in regards to form and legality.

(State Fair Commission; 80 IAC 1-5-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 439; errata, 15 IR 1024; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3372; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 1-5-11 Cancellation or rejection of solicitation

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 11. (a) When the executive director determines under section 11.5 of this rule that it is in the best interests of the commission, any solicitation, including an invitation for a bid or proposal, may be canceled or rejected in whole or in part as specified in the solicitation.

(b) The reasons for a cancellation or rejection of a solicitation must be made a part of the contract file. *(State Fair Commission; 80 IAC 1-5-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 440; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3372; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-5-11.5 Cancellation or rejection of solicitation; procedures

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 11.5. (a) Prior to opening, a solicitation may be canceled, in whole or in part, when the executive director determines, in writing, that such action is in the best interest of the commission for reasons including, but not limited to, the following:

(1) The commission no longer requires the supplies.

(2) The commission no longer can reasonably expect to fund the procurement.

(3) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses that have received a solicitation. The notice of cancellation shall identify the solicitation and cite the reason for cancellation. The reason for cancellation shall be made a part of the procurement file and shall be available for public inspection.

(b) After opening but prior to award, all bids or proposals may be rejected, in whole or in part, when the executive director determines, in writing, that such action is in the best interest of the commission for reasons including, but not limited to, the following:

(1) The supplies being procured are no longer required.

(2) Ambiguous or otherwise inadequate specifications were part of the solicitation.

(3) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds.

(4) All otherwise acceptable bids or proposals received are at clearly unreasonable prices.

(5) There is reason to believe that the bids or proposals:

(A) may not have been independently arrived at in open competition;

(B) may have been collusive; or

(C) may have been submitted in bad faith.

A notice of rejection shall be sent to all businesses that submitted bids or proposals. The reason for rejection shall be made a part of the procurement file and shall be made available for public inspection.

(c) After opening but prior to award, individual bids or proposals may be formally rejected when the executive director makes a written determination that:

- (1) the business that submitted the bid is nonresponsive under 80 IAC 1-6-1;
- (2) the bid is not responsive in that it does not conform in all material respects to the requirements of the solicitation; and
- (3) the supply offered is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternatives or other acceptability criteria set forth in the solicitation.

The determination shall be made a part of the contract file. (*State Fair Commission; 80 IAC 1-5-11.5; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3372; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-5-12 Manner of giving notice

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 12. (a) Whenever public notice is required by applicable sections of this rule, the notice shall be given in the manner prescribed by this section.

(b) The minimum number of notices shall be given by publication according to the following schedule:

- (1) If the ultimate expenditure involved in a procurement is estimated to exceed seventy-five thousand dollars (\$75,000), a notice shall be published at least once each week for two (2) successive weeks.
- (2) If the ultimate expenditure involved in a procurement is estimated to be twenty-five thousand dollars (\$25,000) or more, but not to exceed seventy-five thousand dollars (\$75,000), a notice shall be published at least one (1) time.
- (3) If the ultimate expenditure involved in a procurement is estimated to be less than twenty-five thousand dollars (\$25,000), publication of notice is not required.
- (4) The executive director may provide for the publication of additional notices, even if no publication is required by this section.

(c) Whenever publication of notice is required by this section, the notice shall be published in one (1) newspaper of general circulation in Marion County, Indiana. If any of the supplies being procured are for the specific use of the commission and is located outside of Marion County, Indiana, the notice may also be published in one (1) or more newspapers of general circulation in the area in which the supplies are to be used. The executive director may designate additional newspapers for the publication of notice according to the nature of the procurement.

(d) In addition to the publication requirements of this section, notice shall be given in the following manner whenever the ultimate expenditure involved in a procurement is estimated to exceed twenty-five thousand dollars (\$25,000):

- (1) The procurement department or senior manager shall cause issuance of notices, invitations to bid, requests for offers, or requests for proposals by mail to prospective bidders or offerors known to or made known to him. However, failure to give personal notice to a particular bidder or offeror does not invalidate a procurement under this rule.
- (2) The procurement department or senior manager shall post notices on a public bulletin board in the procurement department office.

(e) The procurement department or senior manager 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. The period between:

- (1) the last publication, mailing, or posting of notices; and
- (2) the final date set for submitting bids, offers, or proposals;

may not be less than five (5) normal business days. (*State Fair Commission; 80 IAC 1-5-12; filed Nov 27, 1991, 2:00 p.m.: 15 IR 440; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3373; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-5-13 Solicitation for procurement; separate contracts; fixed unit prices

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 13. (a) A solicitation for a procurement under this rule may provide that offers will be received and contracts will be awarded separately or for any combination of a line or class of supplies contained in the solicitation. If the procurement department does not indicate in the solicitation how it might award separate contracts, it may award separate contracts under this section to different offerors only if the executive director makes a determination showing that the award of separate contracts is in the interest of efficiency or economy.

(b) A solicitation for a procurement under this rule may provide that the procurement department will award a contract for the procurement of supplies for an unspecified number of items at a fixed price per unit. Such a contract may include a formula or a method for escalation of the unit price. (*State Fair Commission; 80 IAC 1-5-13; filed Nov 27, 1991, 2:00 p.m.: 15 IR 440; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3373; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-5-14 Identification of each beneficiary and empowered settlor

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2; IC 30-4-1-1

Sec. 14. (a) This section applies whenever a contract is awarded by sealed bidding or acceptance of proposals.

(b) A bid or proposal submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each of the following:

(1) Beneficiary of the trust.

(2) Settlor empowered to revoke or modify the trust.

(*State Fair Commission; 80 IAC 1-5-14; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 6. Qualifications and Duties of Bidders, Offerors, and Prospective Contractors

80 IAC 1-6-1 Determination of nonresponsibility

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) If a bidder or offeror is not a responsible bidder or offeror, that determination shall be made in writing by the executive director.

(b) If a bidder or offeror fails to provide information required by the procurement department or the commission concerning a determination of whether that bidder or offeror is a responsible bidder or offeror, that bidder or offeror may not be considered a responsible bidder or offeror for the purposes of this rule. (*State Fair Commission; 80 IAC 1-6-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-6-2 Prequalification of suppliers

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 2. Prospective contractors may be prequalified for particular types of supplies. Solicitation mailing lists of potential contractors may include any or all of such prequalified suppliers. (*State Fair Commission; 80 IAC 1-6-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-6-3 Submission of cost or pricing data; exceptions

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. (a) Except as provided in subsection (c), a contractor shall do the following:

(1) Submit cost or pricing data.

(2) Certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of either of the following:

(A) The pricing of any contract awarded under 80 IAC 1-5 by competitive sealed proposals concerning the sole source procurement authority, where the total contract price is expected to exceed an amount established by procurement department rules.

(B) The pricing of any change order or contract modification which is expected to exceed an amount established by procurement department rules.

(b) Any contract, change order, or contract modification under which a certificate is required under subsection (a) must contain a provision that the total contract price, including any profit or fee, shall be adjusted to exclude any significant price increase due to inaccurate, incomplete, or outdated cost or pricing data furnished by the contractor as of the date agreed upon between the parties.

(c) The requirements of subsections (a) and (b) do not apply to contracts:

(1) whenever the contract price is based on adequate price competition;

(2) whenever the contract price is based on established catalog prices or market price;

(3) whenever contract prices are set by law or rule; or

(4) whenever it is determined that the requirements of subsections (a) through (b) may be waived, and the reasons for the waiver are stated in writing.

(State Fair Commission; 80 IAC 1-6-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 1-6-4 Foreign corporations; bids and offers; necessity of registration

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. (a) A bidder or offeror that is a foreign corporation must be registered with the secretary of state to do business in Indiana in order to be considered responsible.

(b) The executive director may award a contract to a bidder or offeror pending registration with the secretary of state. If, in the judgment of the executive director, the bidder or offeror has not registered within a reasonable period of time, the executive director shall cancel the contract. A bidder or offeror may not bring a cause of action based on the cancellation of a contract under this subsection. *(State Fair Commission; 80 IAC 1-6-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

Rule 7. Types of Contracts

80 IAC 1-7-1 Prohibited contracts

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The "cost plus a percentage of cost contract" is prohibited. *(State Fair Commission; 80 IAC 1-7-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 442; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 1-7-2 Approval of contracts

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) Except for a firm fixed price contract, the conditions of subsection (b) must be met for the use of any contract type.

(b) A contract type other than a firm fixed price contract may be used only if the executive director determines in writing, the following:

(1) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.

(2) The proposed contractor's accounting system is adequate to allocate costs in accordance with the generally accepted accounting principles.

(c) In addition to the requirements of subsection (b), a cost reimbursement contract may be used if the executive director

determines in writing that the contract is likely to be less costly to the commission than any other type, or that it is impracticable to obtain the supplies or services required except under such a contract. (*State Fair Commission; 80 IAC 1-7-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 442; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-7-3 Multiterm contracts; specified period

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 3. Unless otherwise provided by law, a contract for supplies may be entered into for any period of time not to exceed two (2) years with up to two (2) one (1) year renewals for supplies, or four (4) years for leases of equipment and related maintenance and support agreements if:

(1) the term of the contract and the conditions for renewal or extension, if any, are included in the solicitation; and

(2) the solicitation and contract specify that payment and performance obligations are subject to the availability of funds.

(*State Fair Commission; 80 IAC 1-7-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 442; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-7-4 Multiterm contracts; determination prior to use (Repealed)

Sec. 4. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

80 IAC 1-7-5 Multiterm contracts; cancellation due to unavailability of funds

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 5. When the commission or executive director of the commission makes a determination that funds are not available to support continuation of performance of a multiterm contract, the multiterm contract shall be canceled. A determination by the commission or executive director that funds are not available to support continuation of performance shall be final and conclusive. (*State Fair Commission; 80 IAC 1-7-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 442; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 8. Determinations, Records, and Reports of the Procurement Department

80 IAC 1-8-1 Finality of determinations; judicial review (Repealed)

Sec. 1. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

80 IAC 1-8-2 Anticompetitive practices; reporting

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. When, for any reason, collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general. (*State Fair Commission; 80 IAC 1-8-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-8-3 Retention of procurement records

Authority: IC 15-1.5-2-8

Affected: IC 5-15-5.1; IC 15-1.5-2

Sec. 3. All procurement records shall be retained and disposed of in accordance with records' retention guidelines and schedules approved by the commission on public records under IC 5-15-5.1. All retained records shall be made available to the

attorney general, or his designee, upon request and proper receipt. (*State Fair Commission; 80 IAC 1-8-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-8-4 Retention of contract records

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 4. Notwithstanding section 3 of this rule, the procurement department shall maintain a record listing all contracts made under 80 IAC 1-5-8 and 80 IAC 1-5-9 for a minimum of five (5) years. The record must contain the following:

- (1) Each contractor's name.
- (2) The amount and type of each contract.
- (3) A listing of the supplies procured under each contract.

(*State Fair Commission; 80 IAC 1-8-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 9. Modification and Termination of Contracts for Supplies and Services

80 IAC 1-9-1 Contract clauses

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 1. (a) Contract provision clauses may be included in a contract dealing with the following:

- (1) The unilateral right of the commission, or the executive director on behalf of the commission, to order, in writing, the following:

- (A) Changes in the work within the scope of the contract.
- (B) Temporary stopping of the work or delaying performance.

(b) Variations occurring between estimated quantities of work in a contract and actual quantities. (*State Fair Commission; 80 IAC 1-9-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-9-2 Price adjustments

Authority: IC 15-1.5-2-8; IC 15-1.5-3-8

Affected: IC 15-1.5-2

Sec. 2. Adjustments in price under section 1(a)(1) of this rule must be computed in one (1) or more of the following ways:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.
- (2) By unit prices specified in the contract or subsequently agreed upon.
- (3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon.
- (4) In such other manner as the contracting parties may mutually agree.
- (5) In the absence of agreements by the parties, by a unilateral determination by the commission or executive director of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the commission in accordance with applicable provisions issued under 80 IAC 1-3.

(*State Fair Commission; 80 IAC 1-9-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 1-9-3 Cost or pricing data; submission

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions under 80 IAC 1-6. *(State Fair Commission; 80 IAC 1-9-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

Rule 10. Special Contracting; Entertainment (Repealed)

(Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375)

ARTICLE 2. REAL PROPERTY CONTRACTING PROCEDURES

Rule 1. Definitions

80 IAC 2-1-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The definitions in this rule apply throughout this article. *(State Fair Commission; 80 IAC 2-1-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-2 "Commission" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. "Commission" means the state fair commission. *(State Fair Commission; 80 IAC 2-1-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-3 "Commission works" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. "Commission works" means the process of building, altering, repairing, improving, or demolishing any structure or building, or other improvement of any kind to any real property owned by or leased in the name of the commission. *(State Fair Commission; 80 IAC 2-1-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-4 "Commission works contract" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. "Commission works contract" or "contract" means a contract between the commission and a person for the performance of some work or service related to the completion of a commission works project for the commission. However, the terms "commission works contract" or "contract" do not include contracts for professional services, unless specifically provided to the contrary. *(State Fair Commission; 80 IAC 2-1-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-5 "Contractor" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. "Contractor" means any person who has entered into or seeks to enter into a commission works project. *(State Fair Commission; 80 IAC 2-1-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-6 “Executive director” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. “Executive director” means the executive director of the commission. (*State Fair Commission; 80 IAC 2-1-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-7 “Escrowed income” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. “Escrowed income” means the value of all property held in an escrow account over the escrowed principal in the account. (*State Fair Commission; 80 IAC 2-1-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-8 “Escrowed principal” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 8. “Escrowed principal” means the value of all cash, securities, or other property place [*sic.*, placed] in an escrow account by the commission or a contractor as a retainage on a commission works contract. (*State Fair Commission; 80 IAC 2-1-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-9 “Person” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. “Person” means any association, corporation, fiduciary, individual, joint stock company, joint venture, partnership, sole proprietorship, or otherwise private legal entity. (*State Fair Commission; 80 IAC 2-1-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-10 “Professional services” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2; IC 25-4; IC 25-31

Sec. 10. “Professional services” means one (1) of the following:

(1) The services of a person registered or certified under IC 25-4.

(2) A person licensed under IC 25-31.

(3) A person who performs services or studies that relate to the design or the feasibility of a building, structure, or improvement and recognized in the industry as professional in nature.

(*State Fair Commission; 80 IAC 2-1-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-11 “Responsible contractor” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 11. “Responsible contractor” means a contractor who:

(1) is capable of performing a commission works contract fully;

(2) has the integrity and reliability that will ensure good faith performance; and

(3) is certified by the commission as qualified, if applicable.

(State Fair Commission; 80 IAC 2-1-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 2-1-12 “Responsive contractor” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 12. “Responsive contractor” means a contractor that has submitted a bid or a quotation in conformity with instructions, contract documents, terms, and other conditions for a contract. *(State Fair Commission; 80 IAC 2-1-12; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-13 “Retainage” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 13. “Retainage” means any amount to be withheld from a payment to a contractor or subcontractor under the terms of a contract until the occurrence of a specified event. *(State Fair Commission; 80 IAC 2-1-13; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-14 “Subcontractor” defined

Authority: IC 15-1.5-2-8

Affected: IC 5-16-5; IC 5-16-5.5; IC 15-1.5-2

Sec. 14. “Subcontractor” means any person entering into a contract with a contractor to furnish labor, labor and materials, or materialmen as their respective interest may appear under IC 5-16-5 or IC 5-16-5.5 used in the actual construction of a commission works project. *(State Fair Commission; 80 IAC 2-1-14; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-15 “Substantial completion” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 15. “Substantial completion” means the condition of a commission work when it is sufficiently completed, in accordance with the contract documents as modified by any completed change orders agreed to by the parties, so that the commission can occupy or take possession of the commission work and use it as it is intended to be used. *(State Fair Commission; 80 IAC 2-1-15; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

Rule 2. General Provisions

80 IAC 2-2-1 Purpose

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. This article shall be construed and applied to promote its underlying purposes and policies, which are as follows:

- (1) Simplify, clarify, and modernize the rules governing commission works and professional service contracts.
- (2) Maintain public confidence in the procedures surrounding the awarding and administration of commission works and professional service contracts.
- (3) Ensure fair and equitable treatment of all persons who deal with the commission works system covered by this article.
- (4) Provide increased economy in commission works activities covered by this article and maximize the purchasing value of

the commission funds.

(5) Foster effective broad based competition within the free enterprise system.

(6) Provide safeguards for the maintenance of a commission works system of quality and integrity.

(State Fair Commission; 80 IAC 2-2-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 2-2-2 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) This article applies only to commission works contracts solicited after July 1, 1991.

(b) This article applies to work or improvements to be performed on real property that is being, or that will be, leased by the commission from another person if the lease gives the commission an option to buy the real property.

(c) This article does not apply to work or improvements made to real property that is being, or will be leased by the commission from another person where the commission has no interest in the real property after expiration of the lease. However, a lease between the lessor and the commission may provide that any of the provisions of this article will apply to any work or improvements to be made in the leased real property. *(State Fair Commission; 80 IAC 2-2-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-2-3 Compliance with certain statutes

Authority: IC 15-1.5-2-8

Affected: IC 5-15-6; IC 5-16; IC 15-1.5-2

Sec. 3. (a) The commission shall comply with this article and the following statutes in the administration of commission works contracts:

(1) IC 5-16-1.

(2) IC 5-16-3.

(3) IC 5-16-5.

(4) IC 5-16-5.5.

(5) IC 5-15-6.

(6) IC 5-16-6.5.

(7) IC 5-16-7, if the estimated cost of the commission works project is fifteen thousand dollars (\$15,000) or more.

(8) IC 5-16-8.

(9) IC 5-16-9.

(10) IC 5-16-10.

(11) IC 5-16-11.

(b) The following statutes do not apply to commission works, commission works contracts, or professional service contracts covered under this article:

(1) IC 5-16-2.

(2) IC 5-16-11.2 *[sic.]*.

(State Fair Commission; 80 IAC 2-2-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 2-2-4 Good faith

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. All parties involved in the negotiation, performance, or administration of contracts covered by this article shall act in good faith. *(State Fair Commission; 80 IAC 2-2-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-2-5 Grants, gifts, bequests, or cooperative agreements

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. Notwithstanding this article, the commission shall comply with the terms and conditions of any grant, gift, bequest, or cooperative agreement involving the commission if noncompliance with those terms and conditions would invalidate the grant, gift, bequest, or cooperative agreement. (*State Fair Commission; 80 IAC 2-2-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-2-6 Retention of written determinations

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. The commission shall retain written determinations required by this article in the appropriate official contract file of the commission. (*State Fair Commission; 80 IAC 2-2-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-2-7 Public records; inspection

Authority: IC 15-1.5-2-8

Affected: IC 5-14-3; IC 15-1.5-2

Sec. 7. Except as otherwise [*sic., provided*] by law, records of the commission relative to this article are public records subject to public inspection under IC 5-14-3. (*State Fair Commission; 80 IAC 2-2-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 3. Duties of the Commission; Assignment of Commission Works Projects

80 IAC 2-3-1 Duties of the commission

Authority: IC 15-1.5-2-8

Affected: IC 4-22-2; IC 15-1.5-2

Sec. 1. (a) Except as otherwise provided, the commission shall do the following:

(1) May adopt rules under IC 4-22-2 necessary to carry out this article.

(2) Consider and decide matters of policy under this article.

(3) Enforce this article and the rules adopted under it.

(4) Contract for professional consulting services to carry out the provisions of this article.

(b) The consulting engineer of the commission, and on behalf of the commission, shall do the following:

(1) Prepare or supervise preparation of contract documents for commission works projects.

(2) Approve contract documents for commission works projects.

(3) Advertise for bids for commission works contracts.

(4) Recommend to the commission and executive director award of commission works contracts.

(5) Supervise and/or cause inspection of all work relating to commission works projects.

(6) Recommend to the executive director and the commission approval of any necessary lawful changes in contract documents relating to a commission works contract that has been awarded.

(7) Approved [*sic., Approve*] or reject estimates for payment.

(8) Accept or reject a commission works project, subject to the review and approval of the executive director or the commission, as applicable.

(c) Except as otherwise provided, whenever in the part a duty is specified or authority is granted that relates to the estimated dollar value of a commission works project, the executive director shall make the determination of the value of the project. Such determinations of the executive director is [*sic., are*] final and conclusive and is [*sic., are*] the amount against with [*sic., which*]

the existence of the duty or the authority shall be determined, even if it is later found that the determination of the executive director was erroneous. (*State Fair Commission; 80 IAC 2-3-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 4. Qualifications for Commission Works Projects

80 IAC 2-4-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. This rule governs the qualifications and classifications of contractors and of persons desiring to perform professional services relating to a commission works project. (*State Fair Commission; 80 IAC 2-4-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 448; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-4-2 Qualifications of prospective contractors

Authority: IC 15-1.5-2-8

Affected: IC 4-13.6-4; IC 15-1.5-2

Sec. 2. All persons desiring to perform professional services relating to a commission works project must be registered and certified by the state of Indiana, public works certification board, in accordance with the provisions of IC 4-13.6-4. Proof of such registry or certification must be included with any bid or quotation submitted in response to any form of an invitation to bid issued by the commission. (*State Fair Commission; 80 IAC 2-4-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 448; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 5. Bidding Requirements

80 IAC 2-5-1 Method of awarding contracts; approval of contract documents

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) Commission works contracts must be awarded under section 2 of this chapter [*sic.*, *rule*] unless another method is authorized under this chapter [*sic.*, *rule*].

(b) A duly licensed architect or engineer must approve the contract documents for a commission works project. A consulting engineer may be retained by the commission by professional services contract for the purpose of assisting in the administration of the provisions of this article. (*State Fair Commission; 80 IAC 2-5-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 448; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-2 Projects costing \$25,000 or more; bidding procedure; records

Authority: IC 15-1.5-2-8

Affected: IC 5-16-1-2; IC 15-1.5-2; IC 30-4-1-1

Sec. 2. (a) Except as provided by this rule, if the estimated cost of a commission works project is at least twenty-five thousand dollars (\$25,000), the commission shall award a contract for the project based on competitive bids.

(b) If the estimated cost of a commission works project is at least twenty-five thousand dollars (\$25,000), the commission shall cause development of contract documents for a commission works contract and keep the contract documents on file in its offices so that they may be inspected by contractors and members of the public.

(c) The commission shall direct the advertisement for bids under section 7 of this rule. The executive director, with the review and approval of the commission, shall award a contract under 80 IAC 2-6.

(d) A contractor shall submit under oath a financial statement as a part of the bid which complies with the requirements of IC 5-16-1-2.

(e) The commission, executive director, upon the written recommendation of the consulting engineer of the commission, shall reject the bid of a contractor if:

- (1) the estimated cost of the commission works project is one hundred thousand dollars (\$100,000) or more and the contractor is not qualified under 80 IAC 2-4;
- (2) the estimated cost of the commission works project is less than one hundred thousand dollars (\$100,000) and the executive director makes a written determination, based upon information provided under subsections (d) through (e) [*subsection (d) and this subsection*], that the contractor is not qualified to perform the commission works contract;
- (3) the contractor has failed to perform a previous contract with the commission satisfactorily and has submitted the bid during the period of suspension imposed by the executive director (the failure of the contractor to perform a contract satisfactorily must be based upon a written determination by the executive director);
- (4) the contractor has not complied with a rule adopted under this article and the rule specifies that failure to comply with it is a ground for rejection of a bid; or
- (5) the contractor has not complied with any requirement under subsection (g).

(f) The commission shall keep a record of all bids. The state board of accounts shall approve the form of this record, and the record must include at least the following information:

- (1) The name of each contractor.
- (2) The amount bid by each contractor.
- (3) The name of the contractor making the lowest bid.
- (4) The name of the contractor to whom the contract was awarded.
- (5) The reason the contract was awarded to a contractor other than the lowest bidder, if applicable.

(g) Identification of each beneficiary and empowered settlor. This subsection [*sic.*] applies whenever a contract is awarded by competitive sealed bidding or acceptance of quotations. A bid or quotation submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each [*sic., of the following*]:

- (1) Beneficiary of the trust.
- (2) Settlor empowered to revoke or modify the trust.

(*State Fair Commission; 80 IAC 2-5-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 448; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-3 Projects costing less than \$25,000; quotations from contractors; award

Authority: IC 15-1.5-2-8

Affected: IC 5-16-1-3; IC 15-1.5-2

Sec. 3. (a) If the estimated cost of a commission works project is less than twenty-five thousand dollars (\$25,000), the executive director, with the review and approval of the commission, may award a commission works contract either under section 2 of this rule or under this section, at the discretion of the executive director.

(b) If the executive director awards a contract under this section, the commission shall publish notice in accordance with IC 5-16-1-3(a) or require the invitation of quotations from at least three (3) contractors known to them to deal in the work required to be done in accordance with IC 5-16-1-3(b)(2). Failure to receive three (3) quotations shall not prevent an award from being made.

(c) Quotations given by a contractor under this section must be in writing and sealed in an envelope, shall be considered firm, and may be the basis upon which the executive director awards a commission works contract.

(d) The commission shall award a contract to the lowest responsible and responsive contractor and in accordance with any requirements imposed under subsection 2(g) of this chapter [*sic., section 2(g) of this rule*]. (*State Fair Commission; 80 IAC 2-5-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 449; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-4 Performance of commission works projects by employees of the commission

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. If the estimated cost of a commission works project is less than twenty-five thousand dollars (\$25,000), such projects may be performed by appropriate employees of the commission without awarding a commission works contract under section 2 of

this rule. (*State Fair Commission; 80 IAC 2-5-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 449; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-5 Emergency conditions; quotations from contractors; awards

Authority: IC 15-1.5-2-8

Affected: IC 5-16-1-1.6; IC 15-1.5-2

Sec. 5. (a) When the commission, in accordance with IC 5-16-1-1.6, makes a written determination that an emergency condition exists due to fire, flood, windstorm, casualty, or other condition (including mechanical failure of any part of a building or structure), and the emergency condition endangers the health, safety, or welfare of the public or necessary operations, the executive director may act to repair any damage caused by the emergency condition without awarding a commission works contract under section 2 of this rule.

(b) In the case of an emergency described in subsection (a), the commission may invite quotations from at least three (3) contractors known to the commission to deal in the work required to be done and record the same consistent with the requirements of IC 5-6-1-1.6 [*sic.*, IC 5-16-1-1.6]. Failure to receive three (3) quotations shall not prevent an award from being made.

(c) The commission shall keep a copy of the executive director's determinations and the names of the contractors from whom quotations were invited in the appropriate files.

(d) The executive director shall award a contract to the lowest responsible and responsive contractor. However, the executive director may award a contract to a contractor not qualified under section 4 of this chapter [*sic.*, rule], if necessary to remedy the emergency condition. (*State Fair Commission; 80 IAC 2-5-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 450; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-6 Land acquisition; professional services

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. (a) Competitive bids are not required for the acquisition of land or for professional services relating to commission works projects. In awarding contracts for professional services relating to commission works projects, the executive director shall submit [*sic.*] a recommendation to the commission, who shall, by majority vote, award a contract.

(b) In making a recommendation to the commission, the executive director shall consider only the competence and the qualifications of the persons offering to perform the professional services in relation to the type of services to be performed. The executive director, or his authorized designee, shall negotiate compensation for performance of the professional services that the commission determines is reasonable. (*State Fair Commission; 80 IAC 2-5-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 450; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-7 Solicitation of sealed bids; public notice

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. (a) This section applies only to commission works contracts bid under section 2 of this chapter [*sic.*, rule].

(b) The consulting engineer shall solicit sealed bids by public notice inserted once each week for two (2) successive weeks before the final date of submitting bids in:

(1) one (1) newspaper of general circulation in Marion County, Indiana; and

(2) if any part of the project is located in an area outside of Marion County, Indiana, one (1) newspaper of general circulation in that area.

The executive director shall designate the newspapers for these publications. The executive director may designate different newspapers according to the nature of the project and may direct that additional notices be published. The procurement department shall also solicit sealed bids for commission works projects by sending notices by mail to prospective contractors known to the procurement department, and by posting notices on a public bulletin board in its office at least seven (7) days before the final date for submitting bids for the commission works project. (*State Fair Commission; 80 IAC 2-5-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR*

450; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 2-5-8 Copies of bids or quotations; files; public records

Authority: IC 15-1.5-2-8

Affected: IC 5-14-3; IC 5-15-5.1; IC 15-1.5-2

Sec. 8. (a) In order to preserve the integrity of bids or quotations, the procurement department shall make a copy of each bid or quotation as soon as possible after the bids or quotations are opened and before they may be inspected and copied by the public under IC 5-14-3. In making these copies, the procurement department is required to copy only those portions of the bids or quotations which, if altered, would affect the integrity of the bid or quotation. The procurement department may make these copies by means of microfilm or *[sic., or]* by any other means that the executive director may specify.

(b) The procurement department shall keep in a file all original bids or quotations and all documents pertaining to the award of a commission works contract or a professional services contract.

(c) The copies required by subsection (a) and the files required by subsection (b) are public records under IC 5-14-3. The procurement department shall retain these copies and files according to retention schedules established for these records under IC 5-15-5.1. (*State Fair Commission; 80 IAC 2-5-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 450; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-9 Commencement of warranty period

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. Each commission works contract must require that all warranty periods applying to work performed under the contract commence no later than the date that work under the contract is substantially completed. (*State Fair Commission; 80 IAC 2-5-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-10 Void contracts

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 10. All commission works contracts not let in conformity with this chapter *[sic., rule]* are void. (*State Fair Commission; 80 IAC 2-5-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-11 Trench safety systems

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 11. (a) This section applies to a commission works project that may require dreation *[sic., creation]* of a trench of at least five (5) feet in depth.

(b) IOSHA regulations 29 CFR 1926, Subpart P, for trench safety systems shall be incorporated into the contract documents for a commission works project.

(c) The contract documents for a commission works project shall provide that the cost for trench safety systems shall be paid for:

(1) as a separate pay item; or

(2) in the pay item of the principal work with which the safety systems are associated.

(*State Fair Commission; 80 IAC 2-5-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 6. Bid Opening and Award of Contracts

80 IAC 2-6-1 Sealed bids; opening procedures; time to submit bids

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) All bids shall be sealed in an envelope when submitted to the commission's consulting engineer.

(b) The consulting engineer shall open bids in public and read them aloud at the time and place designated in the instructions. Contractors and all other members of the public are entitled to attend bid openings. Before contractors and other members of the public are permitted to inspect and copy bids, the procurement department shall copy bids are *[sic., as]* required under 80 IAC 2-5-8.

(c) The consulting engineer may not require any contractor to submit its bid at any time earlier than the time specified in the instructions for opening of bids. (*State Fair Commission; 80 IAC 2-6-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-6-2 Award of contracts

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. The consulting engineer shall make a recommendation to the commission concerning the awarding or rejection of a contract to the lowest responsible and responsive contractor. (*State Fair Commission; 80 IAC 2-6-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-6-3 Rejection of all bids

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. The commission may, in the reasonable exercise of discretion, reject all bids submitted. (*State Fair Commission; 80 IAC 2-6-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-6-4 Notice to proceed; extensions of time; notice of withdrawal of bid and rejection of contract

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. (a) Within sixty (60) days from the date on which bids are opened, the executive director at the direction of the commission shall award a contract and shall provide the successful contractor with written notice to proceed.

(b) If the executive director fails to award and execute a contract and to issue notice to proceed within sixty (60) days that bids for the contract are opened, the successful contractor may grant one (1) or more extensions of time to the procurement department to award a contract, to execute the contract, and to give notice to proceed. The date that an extension of time granted under this subsection expires must be a date upon which the executive director and the successful contractor agree.

(c) After the sixty (60) day period set by subsection (a) and all extension periods set under subsection (b) have expired, a successful contractor may elect to withdraw its bid and reject the contract only by delivering a written notice to the consulting engineer that grants the consulting engineer at least fifteen (15) additional days to award a contract to the successful contractor. (*State Fair Commission; 80 IAC 2-6-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 7. Bonding, Escrow, Retainages

80 IAC 2-7-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The executive director, or as directed by the commission, may apply this chapter *[sic., rule]* to commission works

projects with an estimated cost less than the amounts specified in section 2 or 7 of this chapter [sic., rule]. (*State Fair Commission; 80 IAC 2-7-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 452; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-2 Contract provisions for retainage of payments; escrow accounts and agreements

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) If the cost of a commission works project is one hundred thousand dollars (\$100,000) or more, the consulting engineer shall include as part of the commission works contract provisions for the retainage of portions of payments by the commission to the contractor, by the contractor to subcontractors, and for the payment of subcontractors. The contract must provide that the commission may withhold from the contractor sufficient funds from the contract price to pay subcontractors as provided in section 4 of this chapter [sic., rule].

(b) A commission works contracts [sic., contract] and contracts between contractors and subcontractors, if portions of the commission works contract are subcontracted, must include a provision that at the time any retainage is withheld, the commission or the contractor, as the case may be, shall place the retainage in an escrow account, with:

- (1) a bank;
- (2) a savings and loan institution;
- (3) the state of Indiana; or
- (4) an instrumentality of the state of Indiana;

as escrow agent. The parties to the contract shall select the escrow agent by mutual agreement. The parties to the agreement shall enter into a written agreement with the escrow agent.

(c) The escrow agreement must provide the following:

(1) The escrow agent shall promptly invest all escrowed principal in the obligations that the escrow agent selects, in its discretion.

(2) The escrow agent shall hold the escrowed principal and income until it receives notice from the executive director and the contractor or the contractor and subcontractor specifying the percentage of the escrowed principal to be released from the escrow and the persons to whom this percentage is to be released. When it receives this notice, the escrow agent shall promptly pay the designated portion of escrowed principal and the same proportion of the escrowed income to the persons designated in the notice.

(3) The escrow agent shall be compensated for its services as the parties may agree. The compensation shall be a commercially reasonable fee commensurate with fees being charged at the time the escrow fund is established for the handling of escrow accounts of like size and duration. The fee must be paid from the escrowed income of the escrow account.

(d) The escrow agreement may include other terms and conditions [sic., conditions] that are not inconsistent with subsection

(c). Additional provisions may include provisions authorizing the escrow agent to commingle the escrowed funds held under other escrow agreements and provisions limiting the liability of the escrow agent. (*State Fair Commission; 80 IAC 2-7-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 452; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-3 Amount of retainage withheld

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. (a) To determine the amount of retainage to be withheld, the commission shall elect one (1) of the following options:

(1) To withhold no more than ten percent (10%) of the dollar value of all work satisfactorily completed until the commission work is fifty percent (50%) complete, and nothing further after that.

(2) To withhold no more than five percent (5%) of the dollar value of all work satisfactorily completed until the commission work is substantially complete.

(b) If upon substantial completion of the work there are any remaining uncompleted minor items, the commission shall withhold, until those items are completed, an amount equal to two hundred percent (200%) of the value of each item as determined by the architect-engineer. (*State Fair Commission; 80 IAC 2-7-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 452; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-4 Payment of subcontractors and suppliers by contractor or escrow agent; certification of previous payments

Authority: IC 15-1.5-2-8

Affected: IC 4-13.6-4-13; IC 15-1.5-2

Sec. 4. (a) Within ten (10) days of receipt of any payment by the commission or its designated representative, or the escrow agent, the contractor or escrow agent shall pay each subcontractor the appropriate share of the payment the contractor received based upon the service performed by the subcontractor.

(b) The contractor shall furnish to the commission a sworn statement or certification at the time of payment to it that all subcontractors have received their share of the previous payment to the contractor. The making of an incorrect certification may be considered a breach of contract by the commission, and the commission may exercise all its rights set out in the contract in addition to the remedies for falsifying an affidavit. Making an incorrect certification may also result in a submission of notice of such falsification to the state of Indiana, public works certification board, which may result in a revocation of the contractor's qualifications under IC 4-13.6-4-13(b) at the discretion of the public works certification board. (*State Fair Commission; 80 IAC 2-7-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 453; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-5 Bid bonds

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. (a) The executive director, or upon recommendation by the commission, may require each contractor to submit a good and sufficient bid bond with the bid. The bid bond may equal any percentage of the estimated cost of the commission works project that the executive director requires.

(b) The consulting engineer may accept bids provided on forms specified by the commission or on forms given by surety companies. (*State Fair Commission; 80 IAC 2-7-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 453; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-6 Payment bonds

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. (a) The commission shall require the contractor to execute a good and sufficient payment bond to the commission in an amount equal to one hundred percent (100%) of the total contract price. The bond shall include at least the following provisions:

(1) The contractor, its successors and assigns, whether by operation of law or otherwise, and all subcontractors, their successors and assigns, whether by operation of law or otherwise, shall pay all indebtedness that may accrue to any person on account of any labor or service performed or materials furnished in relation to the commission work.

(2) The bond shall directly ensure to the benefit of subcontractors, laborers, suppliers, and those performing service or who may have furnished or supplied labor, material, or service in relation to the commission work.

(3) No change, modification, omission, or addition in or to the terms or conditions of the contract, plans, specifications, drawings, or profile or any irregularity or defect in the contract or in the procedures preliminary to the letting and awarding of the contract shall affect or operate to release or discharge the surety in any way.

(4) The provisions and conditions of this chapter [*sic., rule*] shall be a part of the terms of the contract and bond.

(b) The commission may permit the bond given by the contractor to provide for incremental bonding in the form of multiple or chronological bonds that, if taken as a whole, equal the total contract price.

(c) The commission may accept bonds provided on forms specified by the commission or on forms given by surety companies.

(d) The commission shall hold the bond of a contractor for the use and benefit of any claimant having an interest in it and entitled to its benefits.

(e) The commission shall not release sureties of a contractor until the expiration of one (1) year after the final settlement with the contractor. (*State Fair Commission; 80 IAC 2-7-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 453; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-7 Performance bonds

Authority: IC 15-1.5-2-8

Affected: IC 5-16-5.5; IC 15-1.5-2

Sec. 7. (a) The commission shall require the contractor to execute a good and sufficient performance bond to the commission in an amount equal to one hundred percent (100%) of the total contract price on all contracts over one hundred thousand dollars (\$100,000) in accordance with IC 5-16-5.5. The bond shall include at least the following provisions:

(1) The contractor shall well and faithfully perform the contract.

(2) No change, modifications, omission, or addition in or to the terms or conditions of the contract, plans, specifications, drawings, or profile or any irregularity *[sic.]* or defect in the contract or in the procedures preliminary to the letting and awarding of the contract shall affect or operate to release or discharge the surety in any way.

(3) The provisions and conditions of this rule shall be a part of the terms of the contract and bond.

(b) The commission may permit the bond given by the contractor to provide for incremental bonding in the form of multiple or chronological bonds that, if taken as a whole, equal the total contract price.

(c) The commission may accept bonds provided on forms specified by the commission or on forms given by surety companies.

(d) The commission shall not release sureties of a contractor until the expiration of one (1) year after the final settlement with the contractor. (*State Fair Commission; 80 IAC 2-7-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 453; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-8 Final settlement with contractor

Authority: IC 15-1.5-2-8

Affected: IC 5-16-5; IC 15-1.5-2

Sec. 8. (a) Except for amounts withheld from the contractor under section 3 of this rule for uncompleted minor items and subject to IC 5-16-5, the commission may make a full, final, and complete settlement with a contractor, including providing for full payment of all escrowed principal and escrowed income, within sixty-one (61) days following the date of substantial completion if:

(1) the contractor has materially fulfilled all of its obligations under the commission works contract;

(2) the commission has received no claims from subcontractors or suppliers under this rule; and

(3) the contractor has furnished satisfactory evidence showing full payment of all subcontractors and suppliers in the performance of the contract.

(b) After the commission makes a final settlement with a contractor, all claims by subcontractors and suppliers to funds withheld from the contractor under section 2 of this rule are barred. (*State Fair Commission; 80 IAC 2-7-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 454; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-9 Payment of subcontractors and suppliers by the commission; proration of claims; disputed claims

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. (a) If a subcontractor or a supplier files a claim with the commission under section 10 of this rule, and the claim is undisputed, the commission shall do the following:

(1) Pay the claimant from the amounts retained from the contractor under section 2 of this rule.

(2) Take a receipt for each payment.

(3) Deduct the total amount paid to subcontractors and suppliers from the balance due the contractor.

(b) If there is not a sufficient amount owing to the contractor to pay all subcontractors and suppliers making undisputed claims under section 10 of this rule, then the commission shall prorate the amount withheld from the contractor and shall pay the prorated amount to each subcontractor and supplier entitled to a portion of the amount.

(c) If there is a dispute among the contractor, the subcontractors, and the suppliers to the funds withheld by the commission, the commission shall retain sufficient funds until the dispute is settled and the correct amount to be paid to each person is determined. When the dispute is resolved, the commission shall make payments to persons making claims as provided in this section.

(*State Fair Commission; 80 IAC 2-7-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 454; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-10 Claims of subcontractors and suppliers; verification; notice to contractors and sureties; actions upon bonds

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 10. (a) In order to receive payment under section 9 of this rule or to proceed against the bond of the contractor required under section 6 of this rule, any subcontractor or supplier making a claim for payment on account of having performed any labor or having furnished any material or service in relation to a commission works project must file a verified claim with the commission within sixty (60) days from the last labor performed, last material furnished, or last service rendered. The claim shall state the amount due and owing to the person and shall give *[sic., give]* as much detail explaining the claim as possible. The commission shall notify the contractor of any filed claims before taking action under section 9 of this rule.

(b) The claimant may not file suit against the contractor's surety on the contractor's bond until the expiration of thirty (30) days after filing of the claim with the commission. If the claim is not paid in full at the expiration of the thirty (30) day period, the claimant may bring an action in a court of competent jurisdiction in the claimant's own name upon the bond. (*State Fair Commission; 80 IAC 2-7-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 454; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-11 Limitation of actions against sureties

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 11. Unless the bond provides a greater period of time, all suits must be brought against a surety on a bond required by this rule within one (1) year after final settlement with the contractor under section 8 of this rule. All suits against the surety after this time are barred. (*State Fair Commission; 80 IAC 2-7-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 455; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-12 Relationship to other laws

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 12. This rule is intended to supplement all other laws protecting labor, subcontractors, or suppliers and shall not be construed as conflicting with them. (*State Fair Commission; 80 IAC 2-7-12; filed Nov 27, 1991, 2:00 p.m.: 15 IR 455; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 8. Prevailing Scale of Wages

80 IAC 2-8-1 Prevailing scale of wages; payment

Authority: IC 15-1.5-2-8

Affected: IC 5-16-7; IC 15-1.5-2

Sec. 1. (a) Any firm, individual, partnership, corporation, or contractor which is hereafter awarded a contract by this commission for the construction of any commission work *[sic., works]* project with an estimated cost in excess of fifteen thousand dollars (\$15,000), and any subcontractor thereon, shall be required to pay for each class of work on such project a scale of wages which shall in no case be less than the prevailing scale of wages being paid in the immediate locality for such class of work as determined by the appropriate committee of state government in accordance with IC 5-16-7-1.

(b) The commission, in soliciting bids for any such contracts, shall include a schedule of the wages to be paid to such laborers, workmen, or mechanics as a part of the bid, proposal, or quotation documentation required under 80 IAC 2-5. Such schedule shall be filed before any work is performed on such contract or subcontract; provided, such scale shall not be less than the scale

determined as provided in section 1 of this rule *[this section]*; provided further, that nothing in this rule provided shall prevent such contractor or subcontractor from paying a higher rate of wages then *[sic., than]* set out in the schedule of wages filed by him.

(c) A contractor or subcontractor who knowingly fails to pay the rate of wages determined under this chapter *[sic., rule]* and in accordance with IC 5-16-7, shall be subject to the provisions of IC 5-16-7-3 and all the conditions thereof. (*State Fair Commission; 80 IAC 2-8-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 455; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

ARTICLE 3. DISPOSAL OF PROPERTY

Rule 1. General Provisions

80 IAC 3-1-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 6-2.5-2; IC 15-1.5-2

Sec. 1. The provisions of this article shall apply to all property owned by the commission. (*State Fair Commission; 80 IAC 3-1-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 455; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 3-1-2 Methods of disposal

Authority: IC 15-1.5-2-8

Affected: IC 6-2.5-2; IC 15-1.5-2

Sec. 2. (a) One (1) or more of the following methods may be used either singularly, or in combination, for the disposal of property owned by the commission:

- (1) Competitive sealed bid.
- (2) Public sale or auction.
- (3) Sale for reclamation or recycling.
- (4) Allowance made on another purchase.

(b) Regardless of the selected method of disposal, detailed listings of property to be disposed shall be maintained within the files of the commission.

(c) The proceeds derived from any of the selected methods of disposal shall be directly deposited in the general operating fund of the commission. The commission may further designate:

- (1) a specific fund under the general operating fund to which proceeds may be deposited; and
 - (2) expenditures of proceeds from the specified fund.
- (d) Disposal of commission property shall be in accordance with 80 IAC 3-2.

(e) The disposal of property owned by the commission may be subject to the applicable state gross retail tax as outlined in IC 6-2.5-2. (*State Fair Commission; 80 IAC 3-1-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 455; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 2. Disposal of Property

80 IAC 3-2-1 Disposal of property by means of competitive sealed bids

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) The executive director or the commission may direct that items for disposal may be disposed of through the competitive sealed bids method.

(b) When property owned by the commission is to be disposed utilizing this method, the following procedures will apply:

- (1) A notice of proposed sale containing an itemized list of property to be disposed must be prepared and published in at least one (1) newspaper of general circulation within Marion County, Indiana. The executive director may direct publication of the itemized list in additional newspapers as determined appropriate.

(2) The notice of proposed sale will be published thirty (30) days prior to the date of the proposed sale. The notice of proposed sale must include the following:

- (A) Date and time for the receipt of sealed competitive bids.
- (B) Location of the property to be disposed for inspection by potential bidders.
- (C) Itemized list of property to be disposed.
- (D) Terms of the sale.
- (E) Date and time of bid opening.

(3) Award of property shall be made to the highest competitive bidder. Settlement and payment for property disposed of shall be as specified in the terms of the sale, unless otherwise approved by the commission or executive director.

(4) Settlements of disputes arising concerning the property to be disposed will be determined by the executive director or his authorized designee and shall be final and conclusive.

(State Fair Commission; 80 IAC 3-2-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 455; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 3-2-2 Disposal of property by means of public sale or auction

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) The executive director or the commission may direct that items for disposal may be disposed of through the public sale or auction method.

(b) When property owned by the commission is to be disposed utilizing this method, the following procedures will apply:

(1) A notice of proposed sale containing an itemized list of property to be disposed must be prepared and published in at least one (1) newspaper of general circulation within Marion County, Indiana. The executive director may direct publication of the itemized list in additional newspapers as determined appropriate.

(2) The notice of proposed sale will be published thirty (30) days prior to the date of the proposed sale. The notice of proposed sale must include the following:

- (A) Date and time of the proposed sale.
- (B) Location of the property to be disposed for inspection by the public.
- (C) Location of the proposed sale, if different from the location for public inspection.
- (D) Itemized list of property to be disposed.
- (E) Terms of the sale.
- (F) Name of auctioneer, as appropriate.

(3) Award of property shall be made to the highest bidder. Settlement and payment for property disposed of shall be as specified in the terms of the sale, unless otherwise approved by the commission or executive director.

(4) Settlements of disputes arising concerning the property to be disposed will be determined by the executive director or his authorized designee and shall be final and conclusive.

(5) Nothing in this section shall be construed to prevent the designated auctioneer from advertising the sale independently as a normal and regular course of doing business. However, the auctioneer in posting such advertising shall include the items in subdivision (2)(A) through (2)(F) within any such advertisement.

(State Fair Commission; 80 IAC 3-2-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 456; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 3-2-3 Disposal of property by means of sale for reclamation or recycling

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. (a) The executive director or the commission may direct that items for disposal may be disposed of through sale for reclamation or recycling method.

(b) When property owned by the commission is to be disposed utilizing this method, the following procedures will apply:

(1) A detailed listing of materials that will be submitted for reclamation or recycling will be compiled and maintained in the

appropriate records of the commission.

(2) Any materials of toxic or hazardous composition must be identified separately and apart of those of nontoxic or nonhazardous composition. Any such toxic or hazardous materials must be contained or stored in appropriate containers and must be handled in accordance with provisions dictated by type and composition of the toxic or hazardous materials.

(3) Identification of the contractor having the capabilities of reclaiming or recycling of the property to be disposed shall be recorded in the appropriate records of the commission.

(4) The amount of the proceeds to be received under this method shall be recorded in the appropriate records of the commission.

(c) The contractor utilized for the purposes of this section must have a contract in full force and effect as outlined under 80 IAC 1. A contractor having a contract for the disposal of toxic or hazardous materials must comply with all provisions for the safe handling and disposal of such toxic or hazardous materials. (*State Fair Commission; 80 IAC 3-2-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 456; errata, 15 IR 1024; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 3-2-4 Disposal of property by means of allowance made on another purchase

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. (a) The executive director or the commission may direct that items for disposal may be disposed of through allowance made on another purchase method.

(b) When property owned by the commission is to be disposed utilizing this method, the following matters will be recorded in the appropriate records of the commission:

(1) A detailed listing of materials for which allowance will be made on another purchase.

(2) A detailed listing of the purchase for which the allowance is being made.

(3) The name of the entity for which this transaction is being conducted.

(4) The dollar value of both the allowance and the purchase.

(*State Fair Commission; 80 IAC 3-2-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 457; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 3-2-5 Records and disclosure

Authority: IC 15-1.5-2-8

Affected: IC 5-14-3; IC 15-1.5-2

Sec. 5. Regardless of the disposal methods utilized under this rule, all such transactions, files, records, and associated information are considered as a matter of public record in accordance with the provisions of IC 5-14-3 upon completion of all actions utilizing any of the methods outlined in this rule. (*State Fair Commission; 80 IAC 3-2-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 457; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

ARTICLE 4. GENERAL OPERATIONS

Rule 1. Concession

80 IAC 4-1-1 Purpose and scope

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5

Sec. 1. The purpose of this rule is to establish and administer uniform policies as they pertain to concession activities within the state fair commission to the full extent of the authority vested in the state fair commission through the provisions of IC 15-1.5. (*State Fair Commission; 80 IAC 4-1-1; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2810; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 4-1-2 Definitions

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. The following definitions apply throughout this rule:

(1) "Distribution" means the transmitting of literature, products, or other forms of written communications or commodities either for sale or at no cost to the recipient.

(2) "Sampling" means the distribution of literature, product samples, or other forms of items which is intended to solicit, urge, or entice the purchase or support of a product, goods or services, or ideological or political activity from the general public.

(3) "Solicitation" means the act of soliciting, urging, enticing, or otherwise seeking to obtain through offers, suggestions, or incentives support for products, services, items for purchase, or support for an ideological or political methodology being offered to the general public.

(State Fair Commission; 80 IAC 4-1-2; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2810; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 4-1-3 Policy statement; violation

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. (a) The purpose of this section is to establish uniform standards and guidelines for the distribution, sampling, and solicitation activities conducted on the Indiana state fairgrounds. It is the policy of the state fair commission that all solicitation, distribution of literature, and sales of whatever nature take place from within the confines of a rented booth and that no distribution of literature or any other commodity shall take place anywhere on the Indiana state fairgrounds except from the confines of a limited booth space previously rented by the state fair commission or any of its authorized tenants, lessors, or promoters of events contracted with the state fair commission.

(b) The policy established in subsection (a) shall apply to any events held on the physical grounds of the state fair commission or within the confines of any of the buildings or facilities operated by the state fair commission.

(c) Any tenant, lessor, or promoter of events in which a contract for the use of such facilities owned and operated by the state fair commission is in full force and effect is responsible for the enforcement of the policy in subsection (a) during such term as may be specified in the contract for facilities in which such activities are being or proposed to be held.

(d) Violation of the policy as stated in subsection (a) by exhibitors, vendors, or any other visitors or users of fairgrounds facilities will be sufficient grounds for immediate removal from the property of the state fair commission. *(State Fair Commission; 80 IAC 4-1-3; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2810; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 4-1-4 Requirements and utilization of inflatable displays and devices

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. (a) The purpose of this section is to establish uniform and standard guidelines for the use and display of the various forms of inflatable devices typically used for advertising and similar functions during either indoor or outdoor events on the Indiana state fairgrounds.

(b) The following definitions apply to this section:

(1) "Ground based device" means any inflatable device which is mounted or secured to the ground by means of stakes, rods, or other similar materials and is not intended to be airborne.

(2) "Inert gas" means any form of gas that is not subject to flammability from spark, flame, or compression or expansion such as helium gas.

(3) "Inflatable" means any device that requires the use of air or gas that will cause the device to expand into a recognizable form or shape and is intended to attract attendance to displays or conveys an advertising message.

(4) "Nontethered device" means any inflatable device intended for airborne use and is not controlled or attached by any means to ground structures and has no restriction of movement or flight.

(5) "Piloted" means any airborne inflatable device which requires a provision that will provide control of the device in respect to its height, speed, and direction.

(6) "Tethered device" means any inflatable device intended for airborne use but is secured by means of rope, chain, polyester line, or other similar means to a fixed structure firmly attached to the ground to restrict movement or flight.

(c) This section does not apply to any of the following:

(1) Small balloons intended to be either sold or distributed to the general public and are not capable of holding greater than one (1) cubic foot of air or inert gas when fully inflated.

(2) Hot air balloons that are piloted either tethered or nontethered and intended for sport or recreational purposes or are a part of a competitive event or special event not directly intended to be of an advertising nature.

(3) This section does not apply to any inflatable device that is less than three (3) feet in length when fully inflated.

(d) The following restrictions apply for the use of inflatable devices:

(1) No inflatable device may be tethered or airborne within fifty (50) yards of the outside perimeter of the racetrack.

(2) No airborne inflatable device may be allowed to be extended when tethered higher than one hundred (100) feet above the ground, nor shall such tethering lines be extended beyond one hundred (100) feet in length.

(3) No airborne inflatable device may be allowed to become airborne regardless of subdivision (2) if the device or its tether may come in contact with any power, telephone, cable, or any other overhead wiring or cabling that traverses the area. Airborne inflatable devices may be allowed to be airborne so long as the tethering and the device will not contact any overhead wiring or cabling when tethering is fully extended.

(4) No airborne inflatable device may be allowed within the confines on the racetrack area during periods when harness or horse racing events or training or exercising will be occurring.

(5) No inflatable device tethered, nontethered, or ground based will be inflated with gas which is considered volatile or flammable by nature or is subject to flame or explosive reaction that may be induced by static electrical charge, friction, or open flame.

(e) Any company, organization, or individual desiring to utilize an inflatable device as a part of their display, whether airborne or directly attached to the ground, must make application to the state fair commission's director of concessions. Any application must include the following information:

(1) Type and size of the inflatable device.

(2) Indication of whether the inflatable device is ground based or tethered.

(3) Overall length (height) of any inflatable device that is intended to be displayed. If an inflatable device is intended to be airborne, overall length (height), including tethering and the actual device.

(4) Photograph of the inflatable device fully inflated.

(5) Indication of the hours the device will be inflated (from ____ to ____) and of the hours the device will be deflated.

(f) The information requested in subsection (e) is additional to any other applications for exhibit space or other applications currently in place.

(g) If the inflatable device is a part of a display for which a sponsorship program or relationship is an integral part thereof, the application may be coordinated through the marketing director prior to submission to the concession director.

(h) The executive director retains the right to approve or reject any request or application for the use of any inflatable device that does not comply with subsection (d) or (e).

(i) If the inflatable device is a ground based device and is kept inflated by external or internal blowers, the user must ensure that adjacent areas will not be disturbed or interfered *[sic., with]* at any time.

(j) The state fair commission, the state fair board, and their associated staff and personnel are not responsible for the condition of any inflatable device that is either inflated or deflated for storage during periods when the device is not in use or unattended. (*State Fair Commission; 80 IAC 4-1-4; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2810; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 2. Traffic and Parking Control

80 IAC 4-2-1 Traffic and parking control

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The purpose of this rule is to establish procedures for the handling of vehicular traffic entering, leaving, and parking on the grounds of the state fair commission. The state fair commission has the authority under IC 15-1.5-2 for establishing this rule in the interest of public safety and the requirements to maintain safe, accessible, and reasonable control of parking facilities. *(State Fair Commission; 80 IAC 4-2-1; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2812; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 4-2-2 Speed limit

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. The speed limit on any road, lot, alley, or other way on the property under the control and jurisdiction of the state fair commission that may be used by vehicular conveyance is fifteen (15) miles per hour. Local city, county, and state police agencies have the right and full abilities to enforce the speed limit on the grounds. *(State Fair Commission; 80 IAC 4-2-2; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2812; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 4-2-3 No parking zones

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. The following areas are identified and designated as no parking zones and parking in these areas may result in the impounding and towing of that vehicle:

(1) Fire lanes.

(2) Lawn and grass areas immediately adjacent to any buildings except for the area of the racetrack infield, along outer perimeter fence lines, or other designated grass areas specifically designated as parking zones.

(3) Within twenty (20) feet of any pedestrian or vehicular entrance or exit gate and pedestrian or vehicular tunnel ways.

(4) Any prepared surfaces intended to be used for pedestrian foot traffic, ramps, or sidewalks.

(5) In front of building access doors, entrances, or overhead doorways and the ramps, sidewalks, or other approachways thereto.

(6) Any designated loading or unloading docks or zones.

(State Fair Commission; 80 IAC 4-2-3; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2812; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 4-2-4 Restricted parking areas

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. (a) Areas such as fire lanes, restricted areas, temporary restricted parking areas, certain designated no parking zones and handicap parking, or handicap unloading zones will be clearly marked with either signage, yellow paint, barricades, or any combination thereof to clearly indicate that the area is not intended as a parking area or facility. The security or parking department has the responsibility to ensure that when vehicles are parked in a restricted parking zone, the vehicle may be towed out of the restricted area with or without notice of the owner or operator.

(b) Every reasonable attempt will be made to locate the owner or operator of a vehicle that is parked in a restricted parking area; however, if after a reasonable period of time the owner or operator cannot be located or fails to move the vehicle, the security or parking department will take the necessary steps to remove that vehicle. *(State Fair Commission; 80 IAC 4-2-4; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2812; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 4-2-5 Handicap parking; loading or unloading areas

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. There are restricted areas designated for handicap parking or handicap loading or unloading. Such areas will be clearly

and visibly marked with appropriate signage indicating such areas are restricted to handicap usage. Vehicles that are parked in a handicap restricted area must display an authorized license plate or state issued window sticker that clearly indicates that the vehicle is authorized to use handicap areas. Any vehicle not displaying a handicap sign will not be allowed to use that area. (*State Fair Commission; 80 IAC 4-2-5; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2812; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 4-2-6 Signage

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. The following signage will be displayed:

(1) At all vehicular entrances, "Parking is Available in Designated Parking Areas. Unauthorized Parking in Restricted Areas—Handicap, Fire Lanes and No Parking—May Result in Vehicle Being Towed at Owner's Expense."

(2) At all designated no parking zones, "No Parking—Vehicles Towed at Owner's Expense."

(3) At handicap parking zones, "Handicap Parking Only—Valid Handicap Identification Required. All Others Towed at the Owner's Expense."

(4) At handicap loading or unloading zones, "Handicap Loading or Unloading ONLY. Limit 15 Minutes. All Others Towed at Owner's Expense."

(5) At fire lanes, "FIRE LANE—NO PARKING. Vehicles Will Be Immediately Towed at Owner's Expense." Signage will be placed at the extreme ends of the fire lane zones and spaced at one hundred (100) foot intervals along the fire lane.

(6) At restricted parking zones, "Authorized Parking—Stickers and Tickets ONLY. All Others Towed at Owner's Expense."

(*State Fair Commission; 80 IAC 4-2-6; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2812; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 4-2-7 Enforcement

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. (a) Security and parking personnel will enforce the provisions of this rule. However, on those occasions where the parking attendant or the security officer is unable to enforce this rule, the supervisor of the security and parking department may contact the nearest city, county, or state police office for assistance.

(b) The city, county, or state police have overall jurisdiction and authority to intercede on behalf of the state fair commission in the enforcement of this rule. (*State Fair Commission; 80 IAC 4-2-7; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2813; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 4-2-8 Towing and impounding

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 8. (a) The security or parking department will, after a reasonable attempt to locate the owner of a vehicle that is in violation of this rule, cause the impounding, removal, and towing of that vehicle to a designated area.

(b) The security department will designate a location for the storage of impounded vehicles. (*State Fair Commission; 80 IAC 4-2-8; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2813; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 4-2-9 Expenses for enforcement

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. (a) Any and all costs associated with the enforcement of this rule include, but are not limited to, the cost of towing which shall be passed on to the owner or operator of the vehicle.

(b) No vehicle will be released to the owner or operator until such time as all expenses and fees to move the vehicle have been

fully paid. (*State Fair Commission; 80 IAC 4-2-9; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2813; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 3. Motorized Carts

80 IAC 4-3-1 Policy and procedures

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) The purpose of this rule is to set forth procedures regarding the acquisition, operation, and safety requirements for the utilization of motorized carts throughout both the period of the annual state fair and for the remainder of the year.

(b) This rule is applicable to all fair departments, vendors, concessionaires, purveyors, exhibitors, and fairgrounds administration departments and divisions. (*State Fair Commission; 80 IAC 4-3-1; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2813; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 4-3-2 Statement of policy

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. It is the policy of the state fair commission that when motorized carts are to be used on the fairgrounds property, they shall be approved, acquired, and operated by responsible parties in a safe and effective manner so as to not endanger pedestrians or other vehicular traffic. (*State Fair Commission; 80 IAC 4-3-2; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2813; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 4-3-3 Definitions

Authority: IC 15-1.5-2-8; P.L.143-2002

Affected: IC 15-1.5-2

Sec. 3. (a) As used in this rule, “electric personal assistive mobility device” means a self-balancing, two (2) nontandem wheeled device that is designed to transport only one (1) person and that has the following:

(1) An electric propulsion system with average power of seven hundred fifty (750) watts or one (1) horsepower.

(2) A maximum speed of less than twenty (20) miles per hour when operated on a paved level surface, when powered solely by the propulsion system referred to in subdivision (1), and when operated by an operator weighting [*sic.*, *weighing*] one hundred seventy (170) pounds.

(b) As used in this rule, “motorized cart” means any conveyance that is motor driven, either by gas or electricity, and is used to carry passengers or equipment, and that is smaller than normal road type vehicles such as cars, recreational vehicles, or trucks. Motorized carts may be characterized as golf carts, utility carts, or similar forms of vehicles. Motorized cart includes an electric personal assistive mobility device.

(c) The definition of motorized cart in subsection (a) [*sic.*, *subsection (b)*] does not apply to motorcycles, motor scooters, mopeds, motorized bicycles, or three-wheel or four-wheel off-road type vehicles. (*State Fair Commission; 80 IAC 4-3-3; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2813; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; filed Jul 7, 2003, 3:30 p.m.: 26 IR 3536*)

80 IAC 4-3-4 Restriction

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. Motorscooters, mopeds, motorized bicycles, or three-wheel or four-wheel off-road vehicles meeting the definition of section 3 of this rule are not permitted to be operated at any time on the fairgrounds property. (*State Fair Commission; 80 IAC 4-3-4; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2813; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 4-3-5 Procedures for the annual state fair

Authority: IC 15-1.5-2-8; P.L.143-2002

Affected: IC 15-1.5-2

Sec. 5. (a) The procedures in this section will be utilized during the period of the annual state fair period.

(b) All users of motorized carts shall make application for the acquisition and utilization of motorized carts, whether procured by the administration or privately leased or owned, directly to the executive director of the state fair commission. The executive director shall determine the validity of such applications and shall either approve or disapprove the application.

(c) Fair departments must make application through their respective fair board director. Applications will be forwarded from the fair board director through the fair board coordinator for approval by the fair board president prior to approval by the executive director.

(d) Motorized carts that are to be leased from a commercial source or are privately owned must have a certificate of insurance submitted with the application for registration. The certificate of insurance shall show coverage of motorized carts for personal liability and property damage. Pursuant to P.L.143-2002, SECTION 10, a person who uses an electric personal assistive mobility device upon the fairgrounds shall be excluded from the insurance requirement of this subsection.

(e) Applications by vendors, purveyors, concessionaires, and all exhibitors must forward applications along with proof of insurance through the fairgrounds director of concessions prior to approval of the executive director. Pursuant to P.L.143-2002, SECTION 10, a person who uses an electric personal assistive mobility device upon the fairgrounds shall be excluded from the insurance requirement of this subsection.

(f) If the application is approved by the executive director, all approved motorized carts must be registered with the procurement department and shall have a certificate of registration affixed to the front of each approved motorized cart. All motorized carts, whether leased or privately owned, must be registered in this fashion. No certificate of registration will be issued by the procurement department without prior approval of the executive director.

(g) The fair board coordinator will coordinate with the procurement department for the unloading, storage, and assignment of motorized carts. The procurement department shall assign motorized carts as directed by the fair board coordinator issued according to the schedule established by the fair board coordinator.

(h) Each applicant will be held responsible for the safe operation of each motorized cart and for ensuring compliance with the provisions of this rule. Any operator found in violation of this rule shall not be allowed to operate any cart for the remainder of the event. (*State Fair Commission; 80 IAC 4-3-5; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2813; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; filed Jul 7, 2003, 3:30 p.m.: 26 IR 3536*)

Rule 4. Items Prohibited at the Annual State Fair

80 IAC 4-4-1 Policy

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2; IC 15-1.5-5

Sec. 1. (a) The purpose of this rule is to enhance the security of and to protect the health, safety, and welfare of all persons and animals at the fairgrounds during the annual state fair.

(b) Unless otherwise set forth in this rule or other applicable statute, this rule applies to all visitors, guests, invitees, vendors, concessionaires, purveyors, exhibitors, state fair and fair commission employees, contractors, and agents.

(c) Exceptions to this rule may be made on a case-by-case basis with the advance written approval of the executive director of the state fair commission. The executive director shall maintain a file of all such approvals. (*State Fair Commission; 80 IAC 4-4-1; filed Jul 7, 2003, 3:15 p.m.: 26 IR 3537*)

80 IAC 4-4-2 Definitions

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2; IC 15-1.5-5; IC 35-47-1-5; IC 35-47-8-1; IC 35-47-8-3

Sec. 2. The following definitions apply throughout this rule:

- (1) "Alcoholic beverage" means a liquid or solid that:
 - (A) is, or contains, one-half percent (0.5%) or more alcohol by volume;
 - (B) is fit for human consumption; and
 - (C) is reasonably likely, or intended, to be used as a beverage.
- (2) "Deadly weapon" means any of the following:
 - (A) A loaded or unloaded firearm (as defined in IC 35-47-1-5).
 - (B) A destructive device, weapon, device, taser (as defined in IC 35-47-8-3), or electronic stun weapon (as defined in IC 35-47-8-1), equipment, including knives, chemical substance, or other material, that, in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.
 - (C) A biological disease, virus, or organism that is capable of causing serious bodily injury.

The term does not include equipment or implements necessary and appropriate for use by commission personnel, contractors, authorized representatives, concessionaires, and exhibitors in the conduct of business related to the fair.

- (3) "Law enforcement animal" means an animal that is owned or used by a law enforcement agency for the principal purposes of:

- (A) aiding in the detection of criminal activity, the enforcement of laws, and the apprehension of offenders; and
- (B) ensuring the public welfare.

The term includes, but is not limited to, a horse, an arson investigation dog, a bomb detection dog, a narcotic detection dog, a patrol dog, a search and rescue dog, or a tracking dog.

- (4) "Possession" means on or about a person's body or clothing, or in any purse, backpack, cooler, sack, carrier, or other container carried by the person or under that person's direct and immediate control.

- (5) "Service animal" means an animal that a person who is impaired by:

- (A) blindness or any other visual impairment;
- (B) deafness or any other aural impairment;
- (C) a physical disability; or
- (D) a medical condition;

relies on for navigation, assistance in performing daily activities, or alert signals regarding the onset of the person's medical condition.

(State Fair Commission; 80 IAC 4-4-2; filed Jul 7, 2003, 3:15 p.m.: 26 IR 3537)

80 IAC 4-4-3 Alcoholic beverages prohibited

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2; IC 15-1.5-5

Sec. 3. (a) This rule does not apply to alcoholic beverages that are displayed in an exhibit or stored in a manner approved or sanctioned by the fair board or the state fair commission.

(b) No person in possession of an alcoholic beverage shall be permitted onto or be permitted to remain on the fairgrounds during the annual state fair.

(c) Any alcoholic beverage found in the possession of a person while on the fairgrounds during the annual state fair is subject to immediate confiscation by and forfeiture to law enforcement officers or other persons designated by the executive director of the state fair commission. *(State Fair Commission; 80 IAC 4-4-3; filed Jul 7, 2003, 3:15 p.m.: 26 IR 3537)*

80 IAC 4-4-4 Deadly weapons prohibited

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2; IC 15-1.5-5

Sec. 4. (a) This rule does not apply to a federal, state, or local law enforcement officer or to a person who has been employed or authorized by the state fair commission to provide security protection and services during the annual state fair.

(b) No person in possession of a deadly weapon shall be permitted onto or be permitted to remain on the fairgrounds during the annual state fair.

(c) Any deadly weapon found in the possession of a person while on the fairgrounds during the annual state fair is subject

to immediate confiscation by law enforcement officers or other persons authorized by the executive director of the state fair commission.

(d) Any person properly licensed to carry a firearm must secure the firearm in a locked compartment of his or her vehicle, and it shall not be visible to passersby. (*State Fair Commission; 80 IAC 4-4-4; filed Jul 7, 2003, 3:15 p.m.: 26 IR 3538*)

80 IAC 4-4-5 Unauthorized animals prohibited

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2; IC 15-1.5-5

Sec. 5. (a) The only animals permitted on the fairgrounds during the annual state fair are the following:

(1) Animals registered, boarded, or entered for, or that will be registered, boarded, or entered for, exhibition, show, or other competition at the annual state fair.

(2) Animals that will be used in a scheduled performance or to perform work at the annual state fair.

(3) Law enforcement animals.

(4) Service animals.

(b) No person in possession of or having control over an unauthorized animal shall be permitted onto or be permitted to remain on the fairgrounds during the annual state fair. (*State Fair Commission; 80 IAC 4-4-5; filed Jul 7, 2003, 3:15 p.m.: 26 IR 3538*)

ARTICLE 5. INDIANA STATE FAIR COMMISSION CODE OF ETHICS

Rule 1. Name

80 IAC 5-1-1 Name

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The name of this article shall be the Indiana State Fair Commission Code of Ethics for the Conduct of Commission Business. (*State Fair Commission; 80 IAC 5-1-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 457; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 2. Purpose

80 IAC 5-2-1 Purpose

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The purpose of this article is to set ethical standards for the official conduct of the officers and employees of the state fair commission, so that the general public and the governor will have confidence that their performance in office is always conducive to the public good. This article should promote the principle that commission office is a public trust. The business of the commission should be conducted in such a manner as to reassure the citizens and governor of Indiana that the character and conduct of its officials and employees are above reproach. (*State Fair Commission; 80 IAC 5-2-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 457; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 3. Definitions

80 IAC 5-3-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

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

(b) The masculine gender includes the masculine and feminine. The singular form of any noun includes the plural wherever appropriate. (*State Fair Commission; 80 IAC 5-3-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 457; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-2 “Breach of privilege” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. “Breach of privilege” means the private use or dissemination by a commission officer or employee of the commission of information of a confidential nature which results in an economic benefit for such commission officer or employee or for another person or entity to whom the information is revealed. (*State Fair Commission; 80 IAC 5-3-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 457; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-3 “Commission” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. “Commission” means the state fair commission. (*State Fair Commission; 80 IAC 5-3-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 457; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-4 “Commission employee” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. “Commission employee” means any person, other than a commission officer, who receives compensation from the state fair commission and who is a member of or employed in any department, division, office, executive or administrative branch of the commission (including all those persons who contract for their personal or professional services). (*State Fair Commission; 80 IAC 5-3-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-5 “Commission officer” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. “Commission officer” means the appointed members of the commission and its executive director. (*State Fair Commission; 80 IAC 5-3-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-6 “Compensation” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. “Compensation” means any money, thing of value, economic benefit, or fee conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another. (*State Fair Commission; 80 IAC 5-3-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-7 “Conflict of interest” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. “Conflict of interest” means a situation in which a commission officer's or employee's private interest, usually of a financial or economic nature, may influence his judgment in the performance of his public duty. (*State Fair Commission; 80 IAC*

5-3-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 5-3-8 “Doing business” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 8. “Doing business” means engaging in an activity:

(1) for profit;

(2) for gain; or

(3) that requires a license or permit by the commission.

(*State Fair Commission; 80 IAC 5-3-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-9 “Economic interest” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. “Economic interest” means a person's substantial financial interest in investments, employment, awarding of contracts, grants, loans, purchases, leases, sales, or similar matters under consideration or consummated between the commission over which the person has jurisdiction or in which the person is employed. (*State Fair Commission; 80 IAC 5-3-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-10 “Employer” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 10. “Employer” means the [*sic.*] any person from whom the commission officer or the officer's spouse received more than thirty-three percent (33%) of the officer's noncommission income. (*State Fair Commission; 80 IAC 5-3-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-11 “Ethics” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 11. “Ethics” means the principles of conduct governing an individual or group. (*State Fair Commission; 80 IAC 5-3-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-12 “Honorarium” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 12. “Honorarium” means a fee received for speeches, written articles, and participation in discussion groups and similar activities, but does not include reimbursement for expenses. (*State Fair Commission; 80 IAC 5-3-12; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-13 “Information of a confidential nature” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 13. “Information of a confidential nature” means information obtained by reason of the position or office held and which

information has not been, or will not be, communicated to the general public. (*State Fair Commission; 80 IAC 5-3-13; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-14 “Misconduct in office” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 14. “Misconduct in office” means a breach of a commission officer's or employee's public duties or responsibilities. (*State Fair Commission; 80 IAC 5-3-14; filed Nov 27, 1991, 2:00 p.m.: 15 IR 458; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-15 “Official duty” or “public duty” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 15. “Official duty” or “public duty” means those duties that are attached to a commission office or employment by the Constitution, statutes, executive order, promulgated rules and regulations, commission policies or procedures, published job description, or commission directive. (*State Fair Commission; 80 IAC 5-3-15; filed Nov 27, 1991, 2:00 p.m.: 15 IR 459; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-16 “Person” or “entity” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 16. “Person” or “entity” means any individual proprietorship, partnership, unincorporated associations, trust, business trust, group or corporation, whether or not operated for profit, or a governmental agency or political subdivision. (*State Fair Commission; 80 IAC 5-3-16; filed Nov 27, 1991, 2:00 p.m.: 15 IR 459; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 5-3-17 “Privileged information” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 17. “Privileged information” means information obtained by reason of the position or office held that should not be communicated to the general public. (*State Fair Commission; 80 IAC 5-3-17; filed Nov 27, 1991, 2:00 p.m.: 15 IR 459; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 4. Policy Statement

80 IAC 5-4-1 Scope

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) In determining standards for the official conduct of the officers and employees of the commission, the following statements formed its foundation:

- (1) Commission officers and employees must be impartial in the discharge of their duties.
- (2) Decisions and policy must not be made outside of the proper of the commission.
- (3) The commission office must not be used for private gains.
- (4) Public confidence in the integrity of the commission is essential to the exercise of good government.

In addressing any ethical question, the commission will consider this article, the law creating the state fair commission and the Indiana state fair committee, and other relevant laws and regulations [*sic., rules*] such as the nepotism law, the criminal conflict of interest law, etc.

(b) This article is not meant to unduly restrict or limit the behavior of the officers and employees of the commission during the time when they are not on duty. Each commission officer and employee retains his lawful rights and privileges as a private citizen to interests of a personal or private economic nature. These rights and privileges will be honored by the commission to the extent that they are compatible with an individual's office or employment; provided, however, that no actions, transactions, or involvements shall be performed or engaged in by an officer or employee which might serve to raise the questions of possible "conflict of interest" in the minds of the general public.

(c) Violations of this article may result in penalties ranging from censure to recommendations of dismissal dependent upon the offense. (*State Fair Commission; 80 IAC 5-4-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 459; errata, 15 IR 1024; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 5. Acceptable Gifts, Favors, Services, Entertainment, Food, Drink, and Honoraria

80 IAC 5-5-1 Acceptance of gifts, favors, services, entertainment, food, drink, and honoraria

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) No commission employee, or the spouse or unemancipated child of a commission employee, may solicit, accept, or receive, directly or indirectly, any gift, favor, service, entertainment, food, or drink under circumstances in which it can reasonably be inferred that the gift would influence the employee to give special consideration to an action by such employee in his official capacity.

(b) This section shall not prohibit political contributions which are reported in accordance with applicable law. In addition, this section shall not prohibit contributions which are accepted by the commission in accordance with applicable law.

(c) Gifts, favors, services, entertainment, food, or drink that exceed an aggregate value in excess of one hundred dollars (\$100) received by an employee or officer in a calendar year from a person desiring to do business or who is doing business with the commission shall be disclosed to the state fair commission on February 1 of the following year.

(d) No commission officer or employee shall accept gifts, favors, services, entertainment, food, or drink that exceed [*sic.*, *exceeds*] an aggregate value of two hundred fifty dollars (\$250) in any calendar year from a person desiring to do business or is doing business with the commission in which the officer or employee holds an office or position. This limit can be waived by the commission for a legitimate public purpose. The following shall not be considered a gift, favor, service, entertainment, food, or drink:

(1) Food or drink consumed by an officer or employee during the conduct of official public business or while attending public ceremonies.

(2) Mementos or souvenirs of nominal value received at public ceremonies or commemorating official business.

(3) Invitations or tickets to political fundraising events or public charitable benefits when used by an employee, officer, or member of his immediate family.

(4) Food or drink consumed by an officer or employee in connection with his official duties if consumed at a reception or gathering for public officials.

(5) Food or drink consumed by an officer or employee or other reasonable courtesies extended to an officer or employee during negotiations or other activities related to an economic development project.

(6) Invitations or tickets to events that are acquired as complimentary or as a result of contractual agreements for the rental, leasing, or facilitating of events that are held or conducted in or on property of the commission. Extreme care shall be taken to ensure that such acquisition of invitations or tickets to such events does not constitute required elements, terms, or conditions of any contractual agreements and solely represents gestures of "good will". Invitations or tickets acquired by this method:

(A) shall be presented to the executive director or commission officer as a block;

(B) shall not be individually designated as to recipient;

(C) shall be disbursed by the executive director or commission officer as they deem appropriate.

(e) If an honorarium is offered to a commission officer or employee as payment for a speech or article, whose content is derived from that officer's or employee's commission position, the honorarium is considered as payment for the performance of commission duties and is not to be accepted. If an honorarium is offered to the commission officer or employee as payment for a

speech or article, whose content is based solely upon the employee's personal knowledge or expertise, the commission officer or employee may accept it.

(f) An intentional violation of subsections (a), (b), or (c) will result in a recommended sanction by the commission of dismissal or suspension of the commission officer or employee unless there are mitigating or extenuating circumstances. (*State Fair Commission; 80 IAC 5-5-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 459; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 6. Appearances, Activities, Expenses

80 IAC 5-6-1 Guidelines for activities and expenses

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) There are many coincidental activities which a commission officer or employee may or may not perform or participate in which frequently are invitational in nature. Such activities include, but are not limited to, personal appearances [*sic.*], speeches, publications, and participation in conferences, conventions, seminars, and public meetings. Such activities enhance the accessibility by the public to commission officers and employees and are therefore to be encouraged if compatible with the performance of one's official duties.

(b) However, commission officers and employees should exercise due care that such occasions or events are of a nature and in a setting that may not be reasonably construed by the public as improper.

(c) Commission employees should first utilize the normal commission policy and procedures concerning travel expense and allowance provisions when attending events concerning commission business. However, there may be instances where commission employees may be considered in compliance with the letter and spirit of this article even if expenses are directly assumed by a sponsor. The commission may review such event for any improprieties. Each case shall be evaluated on its individual merits.

(d) Amounts assumed by a sponsor for a commission officer or employee for reasonable expenses in attendance at a sponsored activity shall not be deemed as compensation, a gift, or a gratuity.

(e) If a sponsor is desirous of reimbursing the commission for any part or all of the expenses incurred by the commission on behalf of the commission's officer, employee, or their official representatives, such sponsor should remit to the controller of the state fair commission any such amounts. The controller of the state fair commission shall quietus such funds into the general operating fund of the commission. Reports of such quietus shall be brought to the attention of the commission and its executive director as a matter of public record. (*State Fair Commission; 80 IAC 5-6-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 460; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 7. Moonlighting

80 IAC 5-7-1 Moonlighting

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. A commission employee must not engage in outside employment or other outside activity not compatible with the full and proper discharge of his commission duties and responsibilities. This outside employment or other outside activity must not impair his independence [*sic.*] of judgment as to his official responsibilities, pose a likelihood of conflict of interest, pose a threat of unsafe activities or conditions due to inordinate or excessive fatigue, or require him or persuade him to disclose confidential information acquired by him as a result of his official duties. (*State Fair Commission; 80 IAC 5-7-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 461; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 8. Conflicts of Interest; Prohibitions

80 IAC 5-8-1 Conflicts of interest

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) If, in the course of the discharge of his official duties as a commission officer or employee, he shall find himself in a position where his, or his spouse's, or his unemancipated children's economic interest shall be substantial and material and in conflict with the interest of the people of this state, then such commission officer or employee shall be expected to resolve such conflicts as provided under 80 IAC 5-9.

(b) No commission officer or employee shall solicit or accept compensation other than that provided for by law for such office or employment for the performance of his official duties.

(c) No commission officer or employee, other than in performing his duties in making payments to other state officers or employees as provided by law, shall pay or offer to pay any commission officer or employee any compensation for the performance of his official duties.

(d) No commission officer or employee shall benefit from, or permit any other person to benefit from, information of a confidential nature.

(e) No commission officer or employee, in his personal dealings, shall receive compensation or economic benefit from the sale or lease of any property or service which exceeds that which the commission officer or employee would charge or receive in the ordinary course of business.

(f) No commission officer or employee shall participate in any decision or vote of any kind in which he, his spouse, or his unemancipated children have an economic interest.

(g) No commission officer or employee shall engage in work other than the performance of official duties during working hours, except as permitted by other commission policies or procedures.

(h) No commission officer or employee shall divulge privileged information, or information of a confidential nature, except as permitted by law. (*State Fair Commission; 80 IAC 5-8-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 461; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 9. Report of Possible Conflicts; Advice

80 IAC 5-9-1 Action to avoid possible conflicts

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) If any commission officer, department head, or employee who, in the discharge of his official duties, may be required, or is required, to take action which may be prohibited by this article, or which action may result in a conflict of interest, such commission officer or employee:

(1) shall not take such action; and

(2) shall prepare a written statement describing the matter requiring action or decision and the nature of the possible conflict of interest with respect to such action or decision and forward it in the following manner:

(A) A commission officer shall file such statement directly with the chairman of the state fair commission with an informational copy to be filed with the Indiana state ethics commission.

(B) A department head shall file one (1) copy of such statement directly to the executive director and an informational copy to be filed with the chairman of the state fair commission.

(C) A commission employee, other than a department head, shall file such statement with his department head and one (1) informational copy will be filed with the executive director. The department head will, where possible, immediately take appropriate action to resolve the possible conflict of interest and report such action in writing to the employee and the executive director within thirty (30) days. In the event that the department head is unable to resolve such conflict, the department head shall request advice from the executive director. In the event that the executive director and the department head are unable to resolve the conflict, all pertinent documents shall be referred to the chairman of the state fair commission.

(b) The executive director, on behalf of the chairman of the state fair commission, may seek advice and counsel regarding an unresolved conflict of interest from the Indiana state ethics commission.

(c) Any commission officer or employee on his own motion or at the request of an employee may request an advisory opinion from the executive director on the application of this article to a given set of circumstances, real or probable. The executive director may seek advice and counsel from the chairman of the commission or from the Indiana state ethics commission, as appropriate.

(d) It shall be prima facie evidence of the intent to comply with this article when a commission officer, department head, or employee refers a matter as provided herein, and such commission officer, department head, or employee thereafter abides by the decision or written advice thereby obtained unless material facts were omitted or misstated in the written statement. *(State Fair Commission; 80 IAC 5-9-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 461; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

Rule 10. Violations, Complaints, and Investigations

80 IAC 5-10-1 Violations, complaints, and investigations

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The commission may, upon a majority vote of the members serving upon the commission, or upon the written request of the executive director, do the following:

(1) Initiate and conduct an investigation.

(2) Receive and hear any complaint which alleges a breach of any privilege, misconduct of any commission officer or employee, or any violations of the code of ethics and to take action as appropriate to the findings of the investigation.

(3) Instruct the executive director to take the necessary action deemed appropriate by the commission.

(State Fair Commission; 80 IAC 5-10-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 462; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

Rule 11. Compliance of Executive Director

80 IAC 5-11-1 Reporting

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. Whenever the executive director receives a report from the commission in accordance with 80 IAC 5-10, he shall report to the commission the action taken in response to the report. The commission may require in the report that the executive director submit the response required by this section in a reasonable, specified amount of time. *(State Fair Commission; 80 IAC 5-11-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 462; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

Rule 12. Statements of Economic Interest

80 IAC 5-12-1 Filing of statements

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. Before February 1 of each year, the members of the commission and the executive director must file a statement of economic interest made under affirmation with the chairman of the commission with an information copy submitted to the Indiana state ethics commission. A person who knowingly or intentionally fails to file a statement required by rule or this section or files a false statement may be subject to appropriate actions of the state fair commission. *(State Fair Commission; 80 IAC 5-12-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 462; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

Rule 13. Severability

80 IAC 5-13-1 Severability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. If any provisions of this article or the application thereof to any person or circumstances is held invalid, the invalidity

shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. (*State Fair Commission; 80 IAC 5-13-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 462; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

ARTICLE 6. PERSONNEL POLICIES AND PROCEDURES

Rule 1. Definitions

80 IAC 6-1-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The definitions in this rule apply throughout this article. (*State Fair Commission; 80 IAC 6-1-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 462; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-2 "Allocation" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. "Allocation" means the assignment of an individual position to the class. (*State Fair Commission; 80 IAC 6-1-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-3 "Appointing authority" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. "Appointing authority" means the executive director of the commission who has the power by law or by lawfully delegated authority to make appointments to positions. (*State Fair Commission; 80 IAC 6-1-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2814; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-4 "Class" or "class of positions" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. "Class" or "class of positions" means a group of positions sufficiently alike in duties, authority, and responsibility that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group. (*State Fair Commission; 80 IAC 6-1-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-5 "Day" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. "Day" means calendar day except where otherwise specified in a rule. (*State Fair Commission; 80 IAC 6-1-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-6 "Demotion" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. "Demotion" means the change of an employee from one (1) class to another class having a lower maximum salary. (*State Fair Commission; 80 IAC 6-1-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-7 "Hourly employee" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. "Hourly employee" means an employee appointed to a position for which the employee is paid on an hourly basis. (*State Fair Commission; 80 IAC 6-1-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-8 "Intermittent appointment" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 8. "Intermittent appointment" means an appointment to a position which requires performance on an irregular or "as needed" basis. This type of appointment is limited to one hundred eighty (180) working days in a twelve (12) month period unless an exception is allowed and approved by the executive director. (*State Fair Commission; 80 IAC 6-1-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-9 "Part-time appointment" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. "Part-time appointment" means an appointment to a position which does not require full-time performance but does require performance on a regular basis, that is, a predetermined amount of time per day or per week. A part-time employee is paid a percentage of the biweekly salary received by comparably classified full-time employees. (*State Fair Commission; 80 IAC 6-1-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-10 "Pay period" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 10. "Pay period" means a time period, standardized for payroll purposes, used to compute compensation due an employee. (*State Fair Commission; 80 IAC 6-1-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-11 "Position" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 11. "Position" means a group of current duties and responsibilities, assigned or delegated by competent authority, and approved by the executive director, requiring the full-time or part-time employment of one (1) person. (*State Fair Commission; 80 IAC 6-1-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-12 "Promotion" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 12. "Promotion" means a change of an employee from one (1) class to another class having a higher maximum salary. (*State Fair Commission; 80 IAC 6-1-12; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-13 "Reclassification" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 13. "Reclassification" means a change of an individual position by raising it to a higher class, reducing it to a lower class, or moving it to another class in the same pay level on the basis of significant changes in the kind of work, difficulty, or responsibility of the work performed in such position. It does not involve the change of an employee from one (1) position to another. (*State Fair Commission; 80 IAC 6-1-13; filed Nov 27, 1991, 2:00 p.m.: 15 IR 463; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2814; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-14 "Temporary appointment" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 14. "Temporary appointment" means an appointment to a position for a maximum period of ninety (90) working days. (*State Fair Commission; 80 IAC 6-1-14; filed Nov 27, 1991, 2:00 p.m.: 15 IR 464; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-1-15 "Transfer" defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 15. "Transfer" means the change of an employee from one (1) position to another in the same class or similar class with essentially the same basic qualifications and same maximum salary. (*State Fair Commission; 80 IAC 6-1-15; filed Nov 27, 1991, 2:00 p.m.: 15 IR 464; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 2. Administration of Personnel Policies

80 IAC 6-2-1 Purpose and scope

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5

Sec. 1. It is the purpose of this article to establish and administer uniform personnel policies within the commission to the full extent of the authority vested in the state fair commission through the provisions of IC 15-1.5. (*State Fair Commission; 80 IAC 6-2-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 464; errata, 15 IR 1024; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-2-2 Authority of the executive director

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. The executive director is authorized to establish and enforce any administrative policies necessary for the implementation of this article. (*State Fair Commission; 80 IAC 6-2-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 464; errata, 15 IR 1024; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2814; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 3. Classification Plan

80 IAC 6-3-1 Class revision

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. Whenever the creation, abolition, subdivision, or consolidation of classes appears necessary due to the creation of a new position, change in organization, or change in functions or duties of an individual position, the executive director shall prepare class specifications for the classes affected. (*State Fair Commission; 80 IAC 6-3-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 464; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-3-2 Position allocation

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. When a new position is contemplated, a senior manager shall request establishment of the position before it may be filled and, except as otherwise provided under this article, no person shall be appointed to or employed in a position until the position has been allocated by the commission to a class and approved by the executive director or until the classification plan has been amended to provide therefor. (*State Fair Commission; 80 IAC 6-3-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 464; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2814; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-3-3 Position reallocation

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. When the duties of a position or positions are changed substantially, the executive director may order a review of the position or positions involved. Upon completing the review, he may order that the position or positions be allocated to a more appropriate established class. Reallocations shall not be used to avoid restrictions pertaining to layoffs, suspension, dismissals, demotions, and promotions. (*State Fair Commission; 80 IAC 6-3-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 464; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2815; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-3-4 Effect of reallocation

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. The incumbent shall be continued in the position unless he is not eligible for appointment in the new class. Whenever a position is reallocated to a class in a lower pay grade, the employee holding the position at the time of the reallocation shall be paid within the established salary range for the class to which the position is reallocated provided said employee is eligible to fill the position in the new class. The executive director shall determine the step within the range that the employee shall be paid. (*State Fair Commission; 80 IAC 6-3-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 464; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 4. Pay Plan**80 IAC 6-4-1 Revision of plan**

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. Whenever, as a result of changes in classes, living costs, availability of labor supply, prevailing rates of pay, or the financial policy of the commission, a revision of the pay plan appears desirable, the executive director, after consultation with the state fair commission, shall prepare revisions to the salary schedule. The revision in pay rates are subject to approval by the state fair commission and shall be effective on the date or dates designated by the state fair commission. (*State Fair Commission; 80 IAC 6-4-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 465; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-4-2 Appointment of salary

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) The established minimum salary for a class normally shall be paid upon appointment to the class. However, employment at a salary above the established rate may be approved by the executive director and the state fair commission.

(b) If a former employee is reemployed, the senior manager shall make appointment at the same rate of pay the employee had been receiving when the employee was last in that class or a class of the same salary range, or at the nearest higher dollar amount to the salary received before separation which is within the current salary range for the class. (*State Fair Commission; 80 IAC 6-4-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 465; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-4-3 Status change

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. (a) If an employee is changed to a class in a higher salary range, the starting salary for which is less than the salary he receives, no change need be made in his existing rate, unless an adjustment is necessary to place the salary in the new range or unless a salary increase is approved by the senior manager and the executive director.

(b) If an employee is changed to a class in a lower salary range, he shall remain at his current salary only if it does not exceed the maximum of the new range and the executive director determines that salary reduction to a step within the new range is not required. (*State Fair Commission; 80 IAC 6-4-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 465; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-4-4 Salary increases

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. (a) Salary advancement within the established range shall be dependent upon specific written recommendation and shall be based upon meritorious service as indicated by service ratings and other pertinent data.

(b) Whenever an employee transfers from a position under the jurisdiction of one (1) senior manager to a position in the same class under the jurisdiction of a different senior manager, the beginning rate of pay in the new position shall not be more than the rate of pay the employee was receiving in the position from which he is being transferred.

(c) Salary increases granted to employees shall be made on the basis of the approved increment plan and must be approved by the executive director and the state fair commission. (*State Fair Commission; 80 IAC 6-4-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 465; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-4-5 Notification by appointing authority

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. (a) Each change in status and each salary increase shall be submitted on a prescribed form for the approval of the executive director.

(b) Such changes may be made as of the requested effective date only if they are received in the offices of the commission personnel department prior to the effective date. (*State Fair Commission; 80 IAC 6-4-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 465; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-4-6 Total remuneration

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. (a) Any salary paid to an employee shall represent the total remuneration for the employee, not including reimbursements for official travel.

(b) Charges for subsistence or maintenance received shall be deducted from the total salary.

(c) Whenever an employee works for a period less than the regularly established number of hours a day, days a week, or days a month, the amount paid shall be governed by the rate for full-time work and shall be proportionate to the time actually employed.

(d) The payment of a separate salary from two (2) or more functions for duties performed in each of such employments is permissible if the salaries received are in proper proportion to the percentage of full time worked in each area. Such payments may reflect different scales based on the job involved.

(e) No employee in service shall supplement any commission salary through activities, engaged in or on state property, such as collecting commissions, owning and operating concessions, rendering personal or other service. No employee shall supplement any commission salary through activities, engaged in or on state property, during working hours, such as collecting commissions, owning and operating concessions, rendering personal or other services to other employees.

(f) Employees whose substitution on unrelated positions does not involve working more than the normal number of hours shall not be paid additional compensation for the additional duties. No such substitution shall exceed twelve (12) consecutive calendar weeks. (*State Fair Commission; 80 IAC 6-4-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 465; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-4-7 Submission of payrolls and time reports

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. Each senior manager shall maintain an attendance record for each employee, which record shall be subject to audit by the controller at any time. (*State Fair Commission; 80 IAC 6-4-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 466; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 5. Applications

80 IAC 6-5-1 Form of applications

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) Application shall be made on forms prescribed by the executive director. Such forms shall require information covering experience, training, and such other pertinent information as may be requested and shall be signed by the applicant to signify that he certifies to the truth and accuracy of all statements made therein.

(b) Any individual claiming credit for or seeking to establish eligibility for appointment on the basis of training beyond the level of high school graduation may be required to submit, prior to employment, an official transcript or other official document to the commission certifying to the validity of such training. (*State Fair Commission; 80 IAC 6-5-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 466; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 6. Appointment

80 IAC 6-6-1 Anticipation of vacancies

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. Insofar as practicable, vacancies should be anticipated sufficiently in advance to permit the executive director to determine who may be available for appointment and whether or not the position is properly classified. (*State Fair Commission; 80 IAC 6-6-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 466; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-6-2 Approval

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. All appointments, prior to the effective date thereof *[sic.]*, shall be submitted to the executive director on a prescribed form for his approval. No appointment shall be effective without the approval of the executive director. (*State Fair Commission; 80 IAC 6-6-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 466; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-6-3 Equal offers of employment

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. Unless otherwise authorized under this article, all individuals considered for appointment to the same vacancy shall be offered appointment at the same rate of pay and working conditions. (*State Fair Commission; 80 IAC 6-6-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 466; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2815; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-6-4 Temporary and intermittent appointment

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. (a) Whenever there is urgent need of an employee for a temporary period, the executive director may authorize a temporary appointment for a period not to exceed ninety (90) working days. Successive temporary appointments of the same person shall not be made. However, an employee may be reappointed at a later date if his total employment in a temporary position does not exceed ninety (90) days in a twelve (12) month period.

(b) Whenever there is a need for an employee on an irregular or "as needed" basis, a position may be filled by an intermittent appointment. This type of appointment is limited to one hundred eighty (180) working days in a twelve (12) month period unless an exception is requested by the senior manager prior to the appointment and annually thereafter and approved by the executive director. (*State Fair Commission; 80 IAC 6-6-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 466; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-6-5 Transfer

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. (a) A senior manager may at any time assign an employee from one (1) position to another position in the same class under his jurisdiction.

(b) A senior manager, with the approval of the executive director, may at any time transfer an employee to another class with essentially the same basic qualifications and the same salary range.

(c) With the approval of the executive director, an employee may transfer from one (1) division to another. A promotion or demotion may be simultaneous with such a transfer. (*State Fair Commission; 80 IAC 6-6-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 466; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2815; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-6-6 Demotion

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. A position may be filled by demotion of an employee in accordance with 80 IAC 6-10 or, in the event of a necessary reduction in personnel due to lack of work or funds, an employee may accept a voluntary demotion in preference to being laid off. (*State Fair Commission; 80 IAC 6-6-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 467; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 7. Service Ratings**80 IAC 6-7-1 Reporting procedure**

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The executive director may require each senior manager to report, at periodic intervals, service ratings for employees under his jurisdiction. The executive director may require that any or all ratings be substantiated and may prescribe the manner of making such substantiation. (*State Fair Commission; 80 IAC 6-7-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 467; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 8. Training**80 IAC 6-8-1 Responsibility**

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. Responsibility for developing training programs for employees shall be assumed jointly by the executive director and the senior managers. Such training programs may include lectures, courses, demonstrations, assignment of reading matter, or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of employees in the performance of their duties. The provisions of this rule shall not be considered as limiting the responsibilities or functions of the senior managers for developing and carrying out continuing programs of staff development using the supervisory processes as a basic training method. (*State Fair Commission; 80 IAC 6-8-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 467; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-8-2 Credit for training

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. If an employee submits official documents indicating the successful completion of extension, correspondence, department inservice training, or other special training courses, to the executive director, such documents shall be made a part of the employee's personnel record. (*State Fair Commission; 80 IAC 6-8-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 467; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 9. Hours and Leaves**80 IAC 6-9-1 Hours of work**

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The normal minimum working week shall be forty (40) hours except as otherwise established by statute or by specific ruling of the executive director. Shift hours shall be established by the senior manager. Assignment of employees to specific shifts shall be the prerogative of the senior managers. (*State Fair Commission; 80 IAC 6-9-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 467; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-9-2 Overtime and holiday policy

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) Overtime and holiday policy shall be as follows:

- (1) The commission shall observe only such legal holidays as are established by statute or officially proclaimed by the governor.
- (2) When any of these holidays comes on a Saturday, the Friday immediately preceding shall be the legal holiday.
- (3) The first day of the week, commonly called Sunday, shall not be a "holiday".
- (4) The commission may modify the holiday schedule proclaimed by the governor to conform with commitments and requirements essential to the operation and management of fairground activities and events.
- (b) Any PAT or COMOT classified employee who is required to work on a holiday shall be paid for such work at a straight-time rate, with the regular payment for that pay period in which the holiday occurs or, at the option of the senior manager with the approval of the executive director, may be credited with compensatory time off.
- (c) Overtime shall be defined as follows:
 - (1) Overtime shall comprise hours of work, measured in increments of no less than one-fourth (1/4) hour, in excess of the following:
 - (A) Forty (40) hours in a work week for those employees whose regularly established minimum working week is forty (40) hours.
 - (B) For part-time employees, overtime shall comprise hours of work in each week which are in excess of the regularly established minimum working week of full-time employees in comparable jobs within the commission.
 - (2) Holidays, sick days, vacation days, personal days, leaves of absence, compensatory time off, and time spent on call or in standby status shall not constitute "hours of work" or "hours worked".
- (d) Except as provided in section 12 of this rule:
 - (1) senior managers are not eligible for compensation for overtime;
 - (2) all salaried employees other than those specified in subdivision (1) shall accrue compensatory time off only in lieu of monetary compensation at a rate defined in subsection (e) for overtime; and
 - (3) employees paid at the hourly rate shall be eligible for monetary compensation only for overtime.
- (e) When an eligible employee has worked overtime which is compensable, payment for such overtime shall be made with the regular payment for that pay period in which the overtime hours were worked. Employees eligible for overtime compensation shall be paid for overtime at a straight-time rate equal to the employee's regular hourly pay rate multiplied by the number of overtime hours worked.
- (f) Payment for additional hours of work other than overtime shall be as follows:
 - (1) All employees whose regularly established work schedule is less than full time shall be paid for hours worked or hours worked together with sick days, vacation days, personal days, holidays, compensatory time off, or leaves of absence with pay, during the pay period, which are in addition to the employee's normal work schedule but which do not exceed the total number of hours of work in the regularly established work schedules of employees working full time in comparable positions. Payment for such additional hours of work shall be made with the regular payment for that pay period in which the additional hours were worked, at a straight-time rate equal to the employee's regular hourly pay rate multiplied by the number of additional hours worked.
 - (2) Employees who are eligible for overtime payments, and whose regularly established work schedule is full time, shall be paid for hours other than overtime as defined in subsection (c) worked during the pay period which together with sick days, vacation days, personal days, holidays, compensatory time off, or leaves of absence with pay, exceeds the total number of regularly scheduled hours of work in the employee's pay period. Payment for such additional hours of work shall be made with the regular payment for that pay period in which the additional hours were worked at a straight-time rate equal to the employee's regular hourly pay rate multiplied by the number of additional hours worked.
- (g) Rate of accrual for compensatory time off shall be as follows:
 - (1) Employees eligible for overtime compensation pursuant to subsection (d)(2) may be granted compensatory time off at a straight-time rate in lieu of monetary payment for anticipated or earned overtime work.
 - (2) Employees eligible for holiday compensation pursuant to subsection (b) may be granted compensatory time off at a straight-time rate in lieu of monetary payment for anticipated or earned holiday work.
 - (3) Accrual of compensatory time off must be approved by the senior manager.
- (h) The limitation on the amount of accrual for compensatory time off shall be as follows:
 - (1) Employees eligible for overtime compensation pursuant to subsection (d)(2) may accrue no more than two hundred forty (240) hours of compensatory time off. No more than two hundred forty (240) hours of accrued compensatory time off may

be carried over from one (1) calendar year to the following calendar year.

(2) Compensable hours worked in excess of the limits contained in subdivision (1) will not be compensated monetarily.

(i) The use of compensatory time off for employees eligible for overtime compensation under subsection (d)(2) shall be granted as follows:

(1) An employee who has accrued compensatory time off authorized by this article, and who has requested the use of such compensatory time off, shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the commission.

(2) An employee shall be given compensatory time off rather than monetary payment. If the needs of the service make granting of compensatory time off impracticable, the senior manager shall request approval of the executive director to compensate monetarily at the rate provided in subsection (e).

(j) If monetary compensation is paid to an employee for accrued compensatory time off, such payment shall be at the regular rate earned by the employee at the time the employee receives such payment. An employee who has accrued compensatory time off as authorized by this rule shall, upon termination of employment, be paid for the unused compensatory time off at the greater of:

(1) the average regular hourly rate received by such employee during the last three (3) years of the employee's employment; or

(2) the final regular hourly rate received by such employee;

up to a maximum of two hundred forty (240) hours of accrued compensatory time off.

(k) Any payroll containing overtime payments must be accompanied, when submitted to the executive director by the senior manager, by a written justification stating the event that covered the overtime.

(l) The executive director is authorized to establish and enforce any policies necessary for the implementation of this rule, or to prescribe and enforce any policies concerning overtime or holiday compensation which are not inconsistent with this rule.

(m) The payroll department shall keep and preserve, for at least three (3) years, payroll or other records containing the following information and data with respect to each and every employee:

(1) Name in full and, on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes.

(2) Home address, including zip code.

(3) Date of birth.

(4) Sex and occupation in which employed (sex may be indicated by use of the prefixes, Mr., Mrs., and Miss).

(5) Time of day and day of week on which the employee's work period begins. If the employee is part of a work force or employed in or by an establishment all of whose workers have a work week beginning at the same time on the same day, a single notation of the time of the day and beginning day of the work week for the whole work force or establishment will suffice. If, however, any employee or group of employees has a work week beginning and ending at a different time, a separate notation shall then be kept for that employee or group of employees.

(6) Hours worked each work day and total hours worked each work week (for purposes of this section, a "work day" shall be any consecutive twenty-four (24) hours).

(7) Total overtime excess compensation for the work week, that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked.

(n) With respect to employees working on fixed schedules, an employer may maintain records showing, instead of the hours worked each day and each week, the schedule of daily and weekly hours the employee normally works, and:

(1) in weeks in which an employee adheres to this schedule, indicates by check mark, statement, or other method that such hours were in fact actually worked by the employee; and

(2) in weeks in which more or less than the scheduled hours are worked, shows the exact number of hours worked each day and each week.

(o) With respect to persons employed in job categories enumerated in subsection (d) and who did not work overtime that is compensable, as determined by this section, records containing all the information and data required by subsection (m) shall be maintained and preserved except data required by subsection (m)(3) through (m)(7) and, in addition thereto, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits. (*State Fair Commission; 80 IAC 6-9-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 467; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2815; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-9-3 Vacation leave

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. (a) Vacation leave with pay shall be earned by all full-time employees at the rate of one (1) working day for each full month of employment. Vacation will not be credited to per diem, temporary, intermittent, or part-time employees.

(b) Employees who have completed five (5) years or more of full-time employment in the commission or other state service shall accrue three (3) additional vacation days.

(c) Employees who have completed ten (10) years or more of full-time employment in the commission or other state service shall accrue five (5) additional (a total of eight (8)) vacation days.

(d) Employees who have completed twenty (20) years or more of full-time employment in commission or other state service shall accrue five (5) additional (a total of thirteen (13)) vacation days.

(e) Time spent in out-of-pay status, except for military service, shall be deducted from total service time in computing eligibility for additional vacation leave.

(f) Noncontinuous service prior to June 30, 1982, shall not be considered in determining eligibility for additional vacation leave.

(g) No vacation shall accrue to full-time employees during the first six (6) months of employment but, upon completion thereof, regular vacation leave shall be allowed for time served during such periods.

(h) Senior managers shall determine the time and amount of vacation which shall be taken at any one (1) time. Employees shall be limited to four (4) calendar weeks of vacation at any time unless a longer period is recommended by the senior manager and approved by the executive director. Employees granted special leave with pay in accordance with section 5 of this rule shall be entitled to all earned vacation and earned overtime.

(i) For the good of the service in arranging vacation schedules, the executive director may approve the request of a senior manager for full-time employees to anticipate and take vacation leave not to exceed three (3) days.

(j) Requirements for payment of unused vacation, earned overtime, and holidays on separation shall be as follows:

(1) Upon separation from the service, in good standing, an employee shall be paid for unused vacation for a maximum of six (6) calendar weeks, plus overtime and holiday leave to the extent accumulated.

(2) Payment for unused vacation leave, not to exceed six (6) calendar weeks, and all earned overtime and holiday leave shall be paid to beneficiaries of deceased employees.

(3) If the employee has anticipated vacation leave, in accordance with subsection (e), and separated from the service before actually earning such leave, payment for leave used but unearned shall be deducted from the final payment of salary.

(4) Full-time employees who resign before they have completed six (6) months of employment will not be paid for any vacation leave.

(k) Vacation leave shall be charged as one (1) day for each day of absence on which the employee is scheduled to work the full day and as one-half (½) day on each day of absence on which the employee is scheduled to work one-half (½) day. Vacation shall not be charged on a legal holiday.

(l) An employee who resigns in good standing after June 30, 1982, and is subsequently rehired shall have reinstated, six (6) months after rehire, any vacation leave that was accrued but was unused and uncompensated at the time of their resignation. (*State Fair Commission; 80 IAC 6-9-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 469; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2817; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-9-4 Sick leave

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. (a) Sick leave is defined as absence from duty of any employee because of personal illness, injury, or legal quarantine. Sick leave may also be used for an illness or injury in the employee's immediate family which necessitates the employee's absence from work. As used in this section, "immediate family" means spouse, child, or parent who resides with, and is dependent upon, the employee for care and support. The senior manager may at any time require of an employee a medical certificate from the attending physician or a designated physician documenting the nature and extent of the disability or fitness to return to duty. The

cost of such certification from a designated physician shall be the responsibility of the senior manager. Sick leave may be granted if accrued and shall be charged in the same manner as vacation, in accordance with section 3(g) of this rule.

(b) Sick leave with pay shall accrue to full-time employees at the rate of one (1) working day for every two (2) full months of employment plus one (1) additional working day for every four (4) months of full-time employment. Sick leave will not accrue to per diem, temporary, intermittent, or part-time employees.

(c) An employee who resigns in good standing after June 30, 1982, and is subsequently rehired shall have reinstated any sick leave which was unused at the time of their resignation. (*State Fair Commission; 80 IAC 6-9-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 470; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2818; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-9-5 Special sick leave

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. (a) Employees who have a minimum of five (5) years of continuous full-time employment in the commission or other state service and who have exhausted their accumulated vacation leave, sick leave, personal leave, and overtime credits, may apply to the executive director for special sick leave with pay, if further leave is necessary because of their existing illness or disability. Upon verification that special sick leave for any employee is justifiable and necessary because of illness or disability together with a full statement of their reasons, such leave may be approved at the discretion of the senior manager and the executive director. The executive director shall notify the applying employee and the senior manager in writing as to the decision in such request.

(b) A medical certificate from a physician must be submitted with each such request and must include the employee's probable date of return to work. The senior manager or executive director may at any time require of employees a medical certificate from a designated physician documenting the nature and extent of the disability. However, a medical release from a designated physician must be submitted before the employee can return to work.

(c) Special sick leave with pay shall not be in excess of one (1) calendar week for each complete year of continuous full-time employment with the commission. A proportionate amount of leave may be allowed for that period of continuous service in excess of complete years.

(d) No sick, personal, or vacation leave credits will accrue during special sick leave. (*State Fair Commission; 80 IAC 6-9-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 471; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-9-6 Personal leave

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. (a) Personal leave is defined as absence from duty with pay for personal reasons.

(b) Personal leave shall accrue to full-time employees at the rate of one (1) working day for every four (4) months of full-time employment. Personal leave shall not be granted to per diem, temporary, intermittent, or part-time employees.

(c) No employee may accrue a personal leave balance in excess of three (3) days. If an employee is otherwise eligible to accrue personal leave, but the accrual thereof would increase his account balance beyond the three (3) day limit, the personal leave day shall be credited to the employee's accrued sick leave balance.

(d) The senior manager may establish procedures for employees to follow in securing authorization for absence of personal leave.

(e) An employee who resigns in good standing after June 30, 1982, and is subsequently rehired shall have reinstated, six (6) months after rehire, any personal leave that was accrued but unused at the time of their resignation. (*State Fair Commission; 80 IAC 6-9-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 471; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2818; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-9-7 Leave with pay; general

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. (a) Subject to prior approval by the executive director, a senior manager may authorize leave with pay for a regular employee for the purpose of securing special education or training, other than departmental inservice, directly appropriate to the employee's position, and which will result in benefit to the state.

(b) The senior manager may allow leave with pay, not to exceed the employee's next three (3) regularly scheduled work days, in the event of the death of any relative specified in this section. The amount of time granted ordinarily will depend upon the closeness of relationship to the deceased and amount of travel necessitated by attendance at the funeral. Such leave may be granted upon the death of a husband, wife, father, mother, son, daughter, brother, sister, grandparent, grandchild, or the spouse of any of these, or a person living in the same household with the employee. For a married employee, those members of the spouse's family are included.

(c) Employees occupying classified positions, except employees paid by the hour or day, who are lawfully required to report for jury duty, or to serve as witnesses before any body or agency having subpoena powers, shall be granted leaves of absence by their senior managers from their positions during the required absence for such duty. When such leaves of absence are granted for jury duty or to serve as witnesses in matters relating to employment with the commission, they shall receive that portion of their regular salary from the commission which will, together with the compensation for such court service, equal their total regular salary for the same period.

(d) Employees who are members of the Armed Forces Reserves or the National Guard shall be entitled to a leave of absence, not to exceed fifteen (15) calendar days in any calendar year, without loss of pay or vacation time. The employee shall be required to submit a written order or official statement requiring the military duty. (*State Fair Commission; 80 IAC 6-9-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 471; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-9-8 Leave without pay; general

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 8. The senior manager, with the approval of the executive director, may grant an employee leave without pay for a period not to exceed two (2) years, whenever such leave is considered to be in the best interests of the commission. Such leave shall be requested in writing by the employee and shall require written approval by the senior manager and the executive director. Except under unusual circumstances, voluntary separation from the service in order to accept employment not in the state service shall not be considered by the executive director as sufficient cause for the approval of a leave of absence without pay. Upon expiration of a regularly approved leave without pay, or sooner upon due notice if the interests of the service make it necessary, the employee shall be returned to a position in the same class as the position held at the time the leave was granted. Employees on leave without pay due to personal illness, injury, or legal quarantine may be required to submit medical proof from a designated physician of fitness to return to work before resuming duties. Failure of an employee on leave to report for duty within five (5) working days after the senior manager issues a written notice to return shall be deemed a resignation. At the time such notice is sent to the employee on leave, the senior manager shall send a copy to the executive director. (*State Fair Commission; 80 IAC 6-9-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 472; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-9-9 Leave without pay; military

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. (a) Any employee, upon request, shall be granted a leave of absence without pay to cover the length of his service in the armed forces of the United States.

(b) Reinstatement from such leaves of absence will be made in accordance with the following policies:

(1) An employee granted a military leave of absence will accrue his credit for length of service during his absence for promotion or for other changes in status within the service.

(2) No sick leave, personal leave, or vacation leave credits will accrue during military leave.

(c) An employee granted a military leave of absence shall be reinstated to his former class of position upon his return provided the following:

(1) He was separated from the service under honorable conditions.

(2) His written application for reinstatement is made in compliance with applicable selective service provisions. The written application for reinstatement should be addressed to the senior manager of the department or division in which the employee worked when leave was granted and a copy sent to the executive director.

(3) He is physically and mentally fit to satisfactorily perform his assigned responsibilities.

(d) The process of reinstatement of an employee returning from military leave shall be as follows:

(1) An employee returning from military leave shall be reinstated in the same class as that which he held when granted the leave, unless the class has been eliminated from the commission classification plan. The reinstatement shall be at the same or greater salary, provided that the salary is within the current range for the class. If the class has been eliminated, the executive director shall recommend reinstatement in an appropriate class in the same salary grade and employment area as the eliminated class.

(2) If there is no vacancy in the former class and level of employment, a vacancy shall be created by demoting the employee in the appropriate class. If demotion is not feasible, said employee will be laid off.

(3) If the employee on military leave fails to make application for return from leave in compliance with applicable selective service provisions after his compulsory tour of duty or completion of his original enlistment, such failure will be considered as an automatic resignation.

(State Fair Commission; 80 IAC 6-9-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 472; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2818; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 6-9-10 Maternity leave

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 10. A senior manager shall grant maternity leave subject to the approval of the executive director and the following:

(1) A senior manager shall, upon written request, grant maternity leave with pay during the period in which any employee is disabled (as certified by a doctor's statement) by pregnancy, miscarriage, abortion, childbirth, or related medical conditions. Payment of regular wages during such period or periods, however, shall be conditioned upon and limited to the employee's use of any sick, vacation, or personal leave days she has accrued.

(2) A senior manager shall, upon written request, grant to an employee maternity leave without pay during the period in which the employee is disabled (as certified by a doctor's statement) by pregnancy, miscarriage, abortion, childbirth, or related medical conditions. Total continuous leave for maternity purposes, both paid and unpaid, however, shall not exceed a period of one (1) calendar year.

(3) Any employee may request a maternity leave at any time during her term of pregnancy. Prior to such request, however, a senior manager may, at any time during the employee's term of pregnancy, request from the employee a medical certification from the attending physician. Such medical certification shall indicate that the employee may continue her usual duties without restriction as to any formal physical requirements of the job and, further, that her employment can continue without injurious effects to either her or her unborn child. Failure on the part of the employee to submit the medical certification requested shall enable the senior manager to place such employee on maternity leave without pay. Such leave shall continue until the requested certification is submitted, subject to the one (1) year restriction as stated in subdivision (2).

(4) An employee who has been absent on maternity leave may return to her employment as soon as her physician deems her to be able to assume her usual duties without restriction as to any normal physical requirements of the job. The executive director may designate a physician to determine if the employee is disabled or capable of returning to work. The cost of such certification of a designated physician shall be the responsibility of the commission. Written certification of such physician's opinion shall be forwarded to the executive director at least two (2) weeks prior to the employee's return to active employment.

The executive director may waive the two (2) weeks notice in the event of a maternity leave of one (1) month or less.

(State Fair Commission; 80 IAC 6-9-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 472; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 6-9-11 Worker's compensation

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 11. In cases of occupational disease or injury suffered in line of duty in which the employee elects to use accumulated vacation, sick leave, and/or overtime prior to the commencement of worker's compensation payments, the amount of leave charged shall be reduced in the ratio of worker's compensation payments to total salary. This applies to the seven (7) day waiting period if it is determined to be compensable. If vacation, sick leave, and/or overtime is used concurrently with worker's compensation payments in order to pay full salary, the amount of leave charged shall be on the basis of the amount paid not covered by the worker's compensation payment. (*State Fair Commission; 80 IAC 6-9-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 473; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-9-12 Exceptions for annual state fair

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 12. (a) The following exceptions to overtime compensation provisions of this rule shall be in force during the month in which the annual state fair will occur:

(1) All personnel classified as hourly employees and clerical office machine operator/technician (COMOT) and who are employed on a full-time salaried basis shall be monetarily compensated on an hourly rate basis, regardless of any previous designated pay category, for any overtime worked in excess of forty (40) hours per week.

(2) Personnel classified other than subdivision (1), except for senior managers as prescribed in section 2(d)(1) of this rule, shall be credited with compensatory time off in lieu of monetary overtime compensation at a straight-time rate, in increments of no less than one-half ($\frac{1}{2}$) hour for overtime worked in excess of forty (40) hours per week.

(b) At the conclusion of the last day of the month in which the annual state fair is conducted, personnel identified in subsection (a)(1) through (a)(2) shall revert to the normal provisions of this rule regarding overtime. (*State Fair Commission; 80 IAC 6-9-12; filed Nov 27, 1991, 2:00 p.m.: 15 IR 473; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2819; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 10. Disciplinary Actions and Separations

80 IAC 6-10-1 Demotion

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. A senior manager or his designee may demote an employee by filing a statement of reasons with the executive director and the employee concerned. (*State Fair Commission; 80 IAC 6-10-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 474; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-10-2 Suspension

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) A senior manager or his designee may suspend, with approval of the executive director, any employee without pay by presenting the employee with written notice of suspension, a copy of which shall be filed with the executive director. If the employee is not available, written notice shall be sent to the employee's last known address via certified mail. A senior manager may suspend, with approval of the executive director, an employee without pay for such time as he considers appropriate, not to exceed thirty (30) days in any twelve (12) month period.

(b) With the approval of the executive director, an employee may be suspended for a longer period pending an investigation or trial of any charges against him. (*State Fair Commission; 80 IAC 6-10-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 474; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-10-3 Dismissal

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. (a) A senior manager, with approval of the executive director, may dismiss an employee and terminate his employment immediately by presenting the employee with a written notice of dismissal, a copy of which shall be filed with the executive director. If the employee is not available, written notice shall be sent to the employee's last known address via certified mail. A dismissed employee shall forfeit all accrued sick, personal, and vacation leave.

(b) An employee, subject to the benefits of the long term or short term disability income program, may not be dismissed from employment due to his absence which results solely from the disability. (*State Fair Commission; 80 IAC 6-10-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 474; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2819; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-10-4 Resignation

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. Any employee wishing to leave in good standing shall give the appointing senior manager at least two (2) weeks written notice in advance of separation. Under unusual circumstances, less time may be considered as sufficient to permit the employee to leave in good standing. Failure to comply with this rule shall be entered on the service record of the employee and may be the cause of denying future employment by the commission. (*State Fair Commission; 80 IAC 6-10-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 474; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-10-5 Appeal

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. Any employee may appeal any action by the executive director directly to the state fair commission. Any appeal must be submitted in writing within ten (10) working days after receipt of the personnel action. (*State Fair Commission; 80 IAC 6-10-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 474; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2820; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 11. (Reserved)

Rule 12. (Reserved)

Rule 13. Termination Due to Governmental Reorganization

80 IAC 6-13-1 Procedure for employment priority

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) Any employee in the service whose employment is terminated as a direct result of state governmental or commission reorganization shall be given priority consideration for employment in vacant positions which are of the same or similar class as that in which the employee was employed at the time his employment was terminated.

(b) "Governmental reorganization" means merger, growth, transfer, discontinuance, or phasing out of state governmental functions. State governmental functions shall not include the maintenance of positions of employment in federally-funded public service employment. Transfer of state governmental functions shall not include intra-agency transfers of positions, but shall include the transfer of functions from one (1) state agency to another. Discontinuance or phasing out of state governmental functions shall not include the expiration of seasonal or temporary terms of employment.

(c) Priority consideration means that former employees who are eligible shall be given consideration for same or similar vacant

positions to be filled in the following manner:

(1) If the agency in which the vacancy exists is the same agency from which the former employee was terminated, the senior manager shall make reasonable effort to offer employment in such positions to eligible former employees prior to making any offers of employment to persons not eligible for priority consideration.

(2) If the agency in which the vacancy exists is not the same agency from which the former employee was terminated, the senior manager shall make reasonable efforts to interview and consider the eligible former employees prior to the consideration of other persons.

(d) To be eligible for priority consideration, the former employee must make written application to the executive director within thirty (30) days from the date of his termination. Upon receipt of such request, the executive director shall determine if the employee is eligible for priority consideration as provided by this rule. If the executive director certifies the former employee as eligible, the personnel department shall provide the following assistance:

(1) Provide personal consultation concerning employment opportunities in state government.

(2) Refer eligibles to available job openings in the nonmerit service.

(e) A former employee certified by the executive director as eligible for priority consideration shall retain priority consideration for a period of one (1) year from the date of his termination. However, the eligible former employee shall be deemed to have waived eligibility if he declines appointment under such conditions as he has previously indicated he would accept. Failure to respond within five (5) working days to an inquiry of the executive director or senior manager by letter, or twenty-four (24) hours by telephone, or to accept appointment when offered, or to report for duty by the time prescribed by the senior manager shall constitute declination. A former employee whose eligibility is waived due to declination of appointment shall, upon his request, be returned to eligible status unless he has waived eligibility due to declination of appointment two (2) previous times. Any former employee having so waived eligibility two (2) previous times may not be returned to eligible status. It shall be the responsibility of the eligible former employee to provide the state with a current address at which he may be contacted.

(f) Eligibility of former employees to priority consideration is limited to those positions which are in the same or similar job classification as that in which the eligible was employed at his termination as shall be determined by the executive director. In determining which positions are same or similar, the executive director shall utilize the following criteria:

(1) Positions which are the same are those represented by identical class codes and class titles.

(2) For a position to be considered as similar to that held by an eligible candidate upon his termination, the class must meet the following requirements:

(A) Have minimum qualifications which are comparable to the former employee's class held at termination or have minimum qualifications which are generally satisfied by possession of the minimum qualifications to the class held by the former employee at termination. If no minimum qualifications are adopted by the agency, the executive director shall utilize the minimum qualifications required for employment in that class within the state merit service.

(B) Both classes must be in the same or a comparable job family.

(C) The skill level of the class must be the same or lower than the skill level of the class the former employee held at termination.

(g) Implementation of governmental reorganization shall be as follows:

(1) The senior manager of the commission anticipating or undergoing a governmental reorganization shall notify the executive director of all changes or anticipated changes as soon as possible.

(2) If an employee is terminated due to governmental reorganization, the senior manager shall identify the termination as a layoff and shall request the executive director to consider the action as due to governmental reorganization. No layoff due to governmental reorganization shall be effective without the approval of the executive director.

(3) The executive director, in anticipation of layoffs due to governmental reorganization, may establish procedures for the transfer of employees who are anticipated to be laid off.

(h) Eligible former employees, hired in the nonmerit service during their period of eligibility, shall be as follows:

(1) Credited as having continuous service except that time spent in out-of-pay status as a result of their termination due to governmental reorganization shall be deducted.

(2) Credited with all accumulated sick and vacation days which they held upon their termination due to governmental reorganization except accumulated vacation days for which payment was made as provided in 80 IAC 6-9-3(j).

(i) A former employee who is hired by a new agency or in a new work location, while the employee is eligible for priority consideration, shall be allowed relocation expenses in accordance with budget agency regulations. (*State Fair Commission; 80 IAC*

6-13-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 474; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2820; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

Rule 14. Employee Awards System

80 IAC 6-14-1 Suggestions

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. Suggestions shall be submitted to the commission on the prescribed form. The suggestion will be reviewed by the suggestion committee to determine if the employee submitting the suggestion is eligible to be considered for a monetary award. If the employee is eligible for an award, the suggestion will be forwarded to any agencies it would affect for a determination as to the practicality of implementing the suggestion and a cost analysis of projected savings. The affected agencies shall return the suggestion to the suggestion committee, with a statement of its findings as to the viability of the suggestion, whether or not the suggestion will be implemented, and an estimate of the savings to be realized in the first year after implementation. The suggestion committee may then authorize payment of an award to the employee submitting the suggestion. (*State Fair Commission; 80 IAC 6-14-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 476; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-14-2 Standards for determining amount of awards

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) In determining the amount of award to be granted to an employee for a suggestion that will reduce costs, the suggestion committee may follow the following guidelines:

(1) If the anticipated first year savings is one hundred thousand dollars (\$100,000) or less, the maximum award allowable is five percent (5%) of the first year savings.

(2) If the anticipated first year savings is two hundred thousand dollars (\$200,000) or less, but greater than one hundred thousand dollars (\$100,000), the maximum award allowable is two and one-half percent (2½%) of the first year savings plus five percent (5%) of one hundred thousand dollars (\$100,000).

(3) If the anticipated first year savings is greater than two hundred thousand dollars (\$200,000), the maximum award allowable is one percent (1%) of the first year savings plus two and one-half percent (2½%) of two hundred thousand dollars (\$200,000) plus five percent (5%) of one hundred thousand dollars (\$100,000).

(4) No suggestion award shall exceed thirteen thousand dollars (\$13,000).

(b) When a suggestion has no demonstrable cost savings, the suggestion committee, considering such factors as importance, scope of application, and ingenuity, may make a monetary award. (*State Fair Commission; 80 IAC 6-14-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 476; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-14-3 Duplicate, joint, ineligible suggestions

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. (a) If more than one (1) employee submits the same suggestion, only the first received in the office of the commission will be considered eligible for an award.

(b) If a suggestion is made jointly, by more than one (1) employee, any award granted will be divided equally among the group.

(c) If prior consideration has been given to a suggestion or if the suggestion incorporates a recommendation made by one (1) state agency to another, it may be grounds to deny an award. (*State Fair Commission; 80 IAC 6-14-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 476; filed Aug 9, 1993, 10:00 a.m.: 16 IR 2821; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 6-14-4 Decision on awards

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. The decision of the suggestion committee is final as to the eligibility for an award or the amount of any award. (*State Fair Commission; 80 IAC 6-14-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 476; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

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