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Retain this issue as a supplement to the Indiana Administrative Code (See p. 2296)

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IN THIS ISSUE

INDIANA REGISTER

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RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

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

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

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

RETENTION SCHEDULE

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

(1) 2003 Indiana Administrative Code (CD-ROM version).

(2) Volume 26 of the Indiana Register (CD-ROM version).

The Indiana Administrative Code and Indiana Register are distributed in CD-ROM format only. Both are also accessible at www.in.gov/legislative/ic_iac/.

The 2001 Edition of the Indiana Administrative Code, the 2002 Supplement, and other volumes of the Indiana Register may be discarded. (Please consider recycling.)

JUDICIAL NOTICE AND CITATION FORM

IC 4-22-9 provides for the judicial notice of rules published in the Indiana Register or the Indiana Administrative Code. Subject to any errata notice that may affect a rule, the latest published version of a final rule is prima facie evidence of that rule's validity and content.

Cite to a current general and permanent rule by Indiana Administrative Code citation, regardless of whether it has been published in a supplement to the Indiana Administrative Code. For example, cite the entire current contents of title 312 as "Title 312 of the Indiana Administrative Code," cite the entire current contents of the third article in title 312 as "312 IAC 3," cite the entire current contents of the fourth rule in article three as "312 IAC 3-4," and cite part or all of the current contents of the second section in rule four as "312 IAC 3-4-2." IC 4-22-9-6 provides that a citation in this form contains later adopted amendments. Cite a noncodified rule provision by LSA document number, SECTION number, and Indiana Register citation to the page at which the cited text begins. If a reference to a particular version of a rule or a page in the Indiana Register is appropriate, cite the volume, page, and year of publication as "25 Ind. Reg. 120 (2002)." A shorter Indiana Register citation form is "25 IR 120."

PRINTING CODE

This style type is used to indicate that substantive text is being inserted by amendment into a rule, and ~~this style type~~ is used to indicate that substantive text is being eliminated by amendment from a rule. ~~This style type~~ is replaced by a single large "X" to show the elimination of a form or other piece of artwork. **This style type** is used to indicate a rule is being added. *This style type* and **this style type** also are used to highlight nonsubstantive annotations to a rule and to indicate that an entry in a reference table or the index concerns a final rule.

REFERENCE TABLES AND INDEX

The page location of rules and other documents printed in the Indiana Register may be found by using the tables and index published in the Indiana Register. A citation listing of the general and permanent rules affected in a volume and a cumulative index are published in each issue. Cumulative tables that cite executive orders, attorney general's opinions, and other nonrule policy documents printed in a calendar year are published quarterly.

FILING AND PUBLISHING SCHEDULE

NOTICE AND PUBLICATION SCHEDULE. The Legislative Services Agency publishes documents filed by 4:45 p.m. on the tenth day of a month (no later than the twelfth day of a month, excluding holidays or weekends) in the following month's Indiana Register according to the schedule below:

PUBLICATION SCHEDULE

Closing Dates:	Publication Dates:	Closing Dates:	Publication Dates:
March 10, 2003	April 1, 2003	October 10, 2003	November 1, 2003
April 10, 2003	May 1, 2003	November 10, 2003	December 1, 2003
May 9, 2003	June 1, 2003	December 10, 2003	January 1, 2004
June 10, 2003	July 1, 2003	January 9, 2004	February 1, 2004
July 10, 2003	August 1, 2003	February 10, 2004	March 1, 2004
August 11, 2003	September 1, 2003	March 10, 2004	April 1, 2004
September 10, 2003	October 1, 2003	April 8, 2004	May 1, 2004

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

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

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

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

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

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

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

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

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

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

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

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†Agriculture, Commissioner of	340
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40 State Ethics Commission
45 Department of State Revenue
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55 Department of Commerce
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†320.1 Solid Waste Management Board
323 Indiana Hazardous Waste Facility Site Approval Authority
†325 Air Pollution Control Board of the State of Indiana
†325.1 Air Pollution Control Board
326 Air Pollution Control Board
327 Water Pollution Control Board
328 Underground Storage Tank Financial Assurance Board
329 Solid Waste Management Board
†330 Stream Pollution Control Board of the State of Indiana
†330.1 Water Pollution Control Board
†340 Commissioner of Agriculture
341 Indiana Standardbred Board of Regulations
345 Indiana State Board of Animal Health
350 Agricultural Experiment Station
355 State Chemist of the State of Indiana
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430 Developmental Disabilities Residential Facilities Council
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TITLE NUMBER

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515 Professional Standards Board
†520 Commission on Textbook Adoptions
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550 Board of Trustees of the Indiana State Teachers' Retirement Fund
560 Indiana Education Employment Relations Board
570 Indiana Commission on Proprietary Education
†572 Indiana Commission on Vocational and Technical Education
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†645 Department of Employment and Training Services
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650 State Fire Marshal
655 Board of Firefighting Personnel Standards and Education
†660 Administrative Building Council of Indiana
†670 Elevator Safety Board
675 Fire Prevention and Building Safety Commission
680 Boiler and Pressure Vessel Rules Board
685 Regulated Amusement Device Safety Board

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852 Indiana Optometry Board
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860 Indiana Plumbing Commission
862 Private Detectives Licensing Board
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868 State Psychology Board
872 Indiana Board of Accountancy
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884 Board of Television and Radio Service Examiners
888 Indiana Board of Veterinary Medical Examiners
†892 Indiana State Board of Examiners in Watch Repairing
896 Board of Environmental Health Specialists
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915 Veterans' Affairs Commission
920 Indiana War Memorials Commission
925 Meridian Street Preservation Commission
930 Indiana Housing Finance Authority

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

LSA Document #02-238(F)

DIGEST

Adds 11 IAC 1-1-3.5 to define existing debt or contract in IC 24-4.7-1-1. Effective 30 days after filing with the secretary of state.

11 IAC 1-1-3.5

SECTION 1. 11 IAC 1-1-3.5 IS ADDED TO READ AS FOLLOWS:

11 IAC 1-1-3.5 "Existing debt or contract" defined
Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-1-1

Sec. 3.5. (a) For the purposes of IC 24-4.7-1-1, "existing debt or contract" means:

(1) a sum of money currently owed by the consumer who receives the telephone call to the telephone solicitor making the call or to the person who contracted, hired, or authorized the telephone solicitor making the call; or

(2) a legally binding agreement currently in effect between the consumer who receives the call and the telephone solicitor making the call or the person who contracted, hired, or authorized the telephone solicitor making the call.

(b) For the purposes of IC 24-4.7-1-1, an "existing debt or contract" does not include:

(1) an existing debt that the consumer has with a person other than the telephone solicitor making the call or the person who contracted, hired, or authorized the telephone solicitor making the call; or

(2) an existing contract that the consumer has with a person other than the telephone solicitor making the call or the person who contracted, hired, or authorized the telephone solicitor making the call.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-3.5; filed Feb 17, 2003, 9:54 a.m.: 26 IR 2300)

LSA Document #02-238(F)
Notice of Intent Published: 25 IR 4130
Proposed Rule Published: November 1, 2002; 26 IR 420
Hearing Held: November 22, 2002
Approved by Attorney General: January 21, 2003
Approved by Governor: February 14, 2003
Filed with Secretary of State: February 17, 2003, 9:54 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #02-40(F)

DIGEST

Amends 45 IAC 18 concerning charity gaming. Repeals 45 IAC 18-1-2, 45 IAC 18-1-3, 45 IAC 18-1-4, 45 IAC 18-1-5, 45 IAC 18-1-6, 45 IAC 18-1-7, 45 IAC 18-1-8, 45 IAC 18-3-3, 45 IAC 18-6-1, and 45 IAC 18-6-2. Effective 30 days after filing with the secretary of state.

45 IAC 18-1-2
45 IAC 18-1-3
45 IAC 18-1-4
45 IAC 18-1-5
45 IAC 18-1-6
45 IAC 18-1-7
45 IAC 18-1-8
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45 IAC 18-1-12
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45 IAC 18-4-1
45 IAC 18-4-2
45 IAC 18-5-2
45 IAC 18-6-1
45 IAC 18-6-2
45 IAC 18-6-3
45 IAC 18-8

SECTION 1. 45 IAC 18-1-9 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-9 "Affiliate" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-6

Sec. 9. "Affiliate" means any person or entity directly or indirectly controlling, controlled by, or under common control or ownership as the licensee or shares with the licensee a common board, directors, or officer. *(Department of State Revenue; 45 IAC 18-1-9; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2300)*

SECTION 2. 45 IAC 18-1-10 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-10 "Bingo card" and "bingo paper" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-6

Sec. 10. "Bingo card" and "bingo paper" means permeations of letter and number combinations printed on reusable or nonreusable card or paper stock containing five (5) rows of five (5) squares, each imprinted with randomly placed numbers, one (1) through seventy-five (75), except for the center square that may be a free space, and a set of designators, similarly numbered, that are contained in a selection device. The letters "B-I-N-G-O" must also be imprinted, in order above each of the five (5) columns. A serial number consisting of at least five (5) characters must be printed on each item manufactured and sold. *(Department of State Revenue; 45 IAC 18-1-10; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)*

SECTION 3. 45 IAC 18-1-11 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-11 "Bingo equipment" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-6

Sec. 11. "Bingo equipment" means all paraphernalia used to conduct the game, including the following:
(1) Random number selection equipment.
(2) Designators, such as bingo balls.
(3) Designator receptacles.
(4) Number display boards.
(5) Dispensing devices.
The term does not include audio or video equipment, which plays no part in the conduct of the game other than communicating the progress of the game. The term does not include any computer or other technologic aid. *(Department of State Revenue; 45 IAC 18-1-11; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)*

SECTION 4. 45 IAC 18-1-12 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-12 "Bingo supplies" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 12. "Bingo supplies" means:
(1) bingo paper;
(2) bingo cards;
(3) concealed face bingo cards;
(4) daubers; or
(5) other devices designed to cover squares on bingo card or bingo paper.

(Department of State Revenue; 45 IAC 18-1-12; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)

SECTION 5. 45 IAC 18-1-13 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-13 "Calendar" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 13. "Calendar" means a tabular register of days that does not cover less than one (1) calendar month or more than twelve (12) calendar months, and is used for a calendar raffle. *(Department of State Revenue; 45 IAC 18-1-13; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)*

SECTION 6. 45 IAC 18-1-14 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-14 "Calendar raffle" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 14. "Calendar raffle" means a raffle in which a drawing is held and a prize awarded on each date specified in a calendar. *(Department of State Revenue; 45 IAC 18-1-14; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)*

SECTION 7. 45 IAC 18-1-15 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-15 "Charity game night" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-6

Sec. 15. (a) "Charity game night" means an event where wagers are placed upon the following permitted games of chance through the use of imitation money:
(1) A card game.
(2) A dice game.
(3) A roulette wheel.
(4) A spindle.

(b) The term does not include an event where wagers are placed on:
(1) bookmaking;
(2) a slot machine;
(3) a one-ball machine;
(4) a pinball machine that awards anything other than an immediate and unrecorded right of replay;
(5) a policy or numbers game; or
(6) a banking or percentage game played with cards or counters.
(Department of State Revenue; 45 IAC 18-1-15; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)

SECTION 8. 45 IAC 18-1-16 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-16 "Computer or other technologic aid" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 16. "Computer or other technologic aid" means either of the following:

(1) A device that uses electronic or electromagnetic media to assist a player by projecting the outcome of the game, keeping track of the number and letter combinations called in bingo, analyzing the probability of the occurrence of an event relating to the bingo, or analyzing the strategy for playing bingo.

(2) A device, such as a computer, telephone, cable, television, satellite, the Internet, or device that broadcasts the playing of a game or links gaming events.

(Department of State Revenue; 45 IAC 18-1-16; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)

SECTION 9. 45 IAC 18-1-17 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-17 "Concealed face bingo card" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 17. "Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names, such as the following:

(1) Tear-Open.
(2) Bonanza Bingo.
(3) Bull's-eye.
(4) Fortune Cards.

A serial number consisting of at least five (5) characters must be printed on each item manufactured and sold. *(Department of State Revenue; 45 IAC 18-1-17; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 10. 45 IAC 18-1-18 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-18 "Conduct prejudicial to the public confidence in the department" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-1; IC 4-32-9; IC 35-45-5-1

Sec. 18. "Conduct prejudicial to the public confidence in the department", as used in this article and in IC 4-32-1, means conduct that gives the appearance of impropriety, including the failure to file tax returns, conducting a gaming event without a license, sports betting, operating a gambling device, using or possessing a computer or other technologic aid, as defined in section 16 of this rule, or any other activity illegal under IC 35-45-5-1 et seq. *(Department of State Revenue; 45 IAC 18-1-18; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 11. 45 IAC 18-1-19 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-19 "Deal" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 19. "Deal" means each separate package, or series of packages, consisting of one (1) game of pull-tabs or tip boards with the same serial number. *(Department of State Revenue; 45 IAC 18-1-19; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 12. 45 IAC 18-1-20 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-20 "Dispensing device" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 20. "Dispensing device" means a mechanical or electromechanical device with one (1) or more stacking columns that dispense a pull-tab only after a player inserts an appropriate amount of coin or currency. This does not include any device that electronically generates a pull-tab. *(Department of State Revenue; 45 IAC 18-1-20; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 13. 45 IAC 18-1-21 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-21 "Door prize" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 21. "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event and is not premised in whole or in part on the placing of a wager. No organization shall award a door prize when the award of a prize is determined, in whole or in part, on a sporting event. *(Department of State Revenue; 45 IAC 18-1-21; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 14. 45 IAC 18-1-22 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-22 "Existence" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9; IC 6-2.1-3; IC 6-3-2

Sec. 22. "Existence" means the organization's active demonstrable support of its stated purpose or mission in addition to any actual corporate existence, including maintaining its gross income tax exemption under IC 6-2.1-3, maintaining its adjusted gross income tax exemption under IC 6-3-2, and being current in all tax filings. *(Department of State Revenue; 45 IAC 18-1-22; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 15. 45 IAC 18-1-23 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-23 "Festival" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 23. "Festival" means an event where a qualified organization is authorized to conduct bingo events, charity game nights, one (1) raffle event, door prize events, and sell pull-tabs, punchboards, and tip boards. *(Department of State Revenue; 45 IAC 18-1-23; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)*

SECTION 16. 45 IAC 18-1-24 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-24 "Flare" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 24. (a) "Flare" means the card enclosed with each deal of pull-tabs that has the following information:
(1) The name of the game.
(2) The manufacturer's name or distinctive logo.
(3) The game form number.
(4) The prize structure for the game, which includes the number of winning pull-tabs by denomination and their respective winning symbol or symbols or number or numbers combination.
(5) The cost per ticket.
(6) The serial number of the game.
(7) The winning number or symbol for at least the top three (3) winning tiers set out in a manner that each prize may be marked off as the prize is won and awarded.

(b) The requirements of subsection (a)(7) do not apply to games that include the use of a seal card.

(c) In addition to the other requirements of this section, all pull-tabs manufactured or distributed for sale in Indiana must meet the "Standards on Pull-Tabs" adopted by the North American Gaming Regulators Association October 12, 1991, as amended October 20, 1998, which is incorporated by reference. Copies are available from the North American Gaming Regulators Association, 26 East Exchange Street, Suite 500, St. Paul, MN 55101 or http://www.nagra.org. *(Department of State Revenue; 45 IAC 18-1-24; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)*

SECTION 17. 45 IAC 18-1-25 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-25 "In existence for at least twenty-five (25) years" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 25. "In existence for at least twenty-five (25) years" means that the nationally recognized charitable organization must have been continuously incorporated or legally authorized to do business for at least twenty-five (25) years as a charitable organization, in each of at least three (3) states, including Indiana. *(Department of State Revenue; 45 IAC 18-1-25; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)*

SECTION 18. 45 IAC 18-1-26 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-26 "In good standing with the department" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 26. "In good standing with the department" means an individual or organization that has:
(1) made all required tax filings or any other required filings with the department; and
(2) no outstanding liabilities with the department.
(Department of State Revenue; 45 IAC 18-1-26; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)

SECTION 19. 45 IAC 18-1-27 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-27 "Location" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 27. "Location" means the street address and mailing address. It cannot include a post office box and is not connected by a common roof or wall with another structure where gaming activities occur. *(Department of State Revenue; 45 IAC 18-1-27; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)*

SECTION 20. 45 IAC 18-1-28 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-28 "Member" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 28. (a) "Member" means an individual who is qualified for membership in an organization pursuant to its bylaws, articles of incorporation, charter, or rules, who is entitled to vote in the election of the organization's officers or board members, or both, and who is eligible to be elected as an officer or board member, or both, and to participate in the determination of the policies of the organization. The individual must be able to show continuous active participation in the organization's stated purpose or mission, including, but not limited to, the contribution of time, money, or talent to the organization and attends regular meetings of the organization.

(b) An auxiliary member may also be considered a member of an organization for the conduct of an allowable event if:

(1) The auxiliary is part of a nationally recognized charitable organization.

(2) The auxiliary is created in the organizations bylaws adopted prior to the effective date of this section.

(3) The auxiliary member is entitled to vote in the election of the auxiliary organization's officers and/or board members, and who is eligible to be elected as an officer and/or board member and to participate in the determination of the policies of the auxiliary organization.

(4) The individual must be able to show continuous active participation in the auxiliary organization's stated purpose or mission, including, but not limited to, the contribution of time, money, or talent to the auxiliary organization and attends regular meetings of the auxiliary organization.

(Department of State Revenue; 45 IAC 18-1-28; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)

SECTION 21. 45 IAC 18-1-29 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-29 "Nationally recognized charitable organization" defined

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 29. "Nationally recognized charitable organization" means an organization that:

(1) possesses a determination letter or a ruling from the Internal Revenue Service stating that the organization is currently exempt from taxation under 26 U.S.C. 501, or is listed in Internal Revenue Service Publication 78 (Cumulative List of Organizations);

(2) has current exempt status with the department;

(3) is organized primarily for charitable purposes;

(4) is incorporated or legally authorized to do business in at least three (3) states, including Indiana; and

(5) has a national membership of at least five thousand (5,000) people.

(Department of State Revenue; 45 IAC 18-1-29; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2304)

SECTION 22. 45 IAC 18-1-30 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-30 "Operator" defined

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 30. "Operator" means a member of a qualified organization who is:

(1) an Indiana resident;

(2) in good standing with the department; and

(3) in addition to the forgoing *[sic., foregoing]*, the following individuals are also operators:

(A) A bartender licensed with the alcohol and tobacco commission if the bartender sells only pull-tabs, tip boards, or punchboards.

(B) Any person who accounts for money received at the charity gaming event.

(C) Any person who keeps records of the charity gaming event.

(D) Any person who announces the letter-number combination at a bingo event.

(Department of State Revenue; 45 IAC 18-1-30; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2304)

SECTION 23. 45 IAC 18-1-31 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-31 "Pull-tab" defined

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 31. "Pull-tab" means a game conducted in the following manner:

(1) A single folded or banded ticket or a two-ply card with perforated break-open tabs is bought by a player.

(2) The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of letters or symbols.

(3) In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.

(4) Winners or potential winners, if the game includes the use of a seal, are determined by revealing the faces of tickets or cards. The player may be required to sign the player's name on numbered lines provided, if a seal is used.

(5) The player with a winning pull-tab ticket or numbered line receives the prize stated on the flare from the qualified organization.

(6) A serial number consisting of at least five (5) characters must be printed on each item manufactured and sold.

(7) A pull-tab may not be electronically generated.

(Department of State Revenue; 45 IAC 18-1-31; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2304)

SECTION 24. 45 IAC 18-1-32 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-32 "Punchboard" defined

Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 32. "Punchboard" means a card or board that contains a grid or section that hides the random opportunity to win a prize based on the results of punching a single hole to reveal a symbol or prize amount. A serial number

consisting of at least five (5) characters must be printed on each item manufactured and sold. A punchboard may not be electronically generated. *(Department of State Revenue; 45 IAC 18-1-32; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2304)*

SECTION 25. 45 IAC 18-1-33 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-33 "Premises" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 33. "Premises" means a building or a distinct portion of a building where charity gaming is conducted. A portion of a building is considered distinct if it has a separate mailing address and is not connected by a common roof or wall with another structure where gaming activities occur. *(Department of State Revenue; 45 IAC 18-1-33; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 26. 45 IAC 18-1-34 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-34 "Raffle" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 34. "Raffle" means a game in which one (1) or more persons who have purchased a raffle ticket win the prize or prizes. The winner or winners of the raffle are determined by drawing a ticket stub from a receptacle holding ticket stubs corresponding to all tickets sold for the raffle. The winning of a prize in a raffle cannot be premised in whole or in part on a sporting event. *(Department of State Revenue; 45 IAC 18-1-34; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 27. 45 IAC 18-1-35 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-35 "Revoke" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 35. "Revoke" means that a qualified organization cannot conduct any gaming events or hold a license for gaming events. The revocation begins at the time the organization receives notice from the department or when the organization exhausts all administrative remedies, whichever is later. *(Department of State Revenue; 45 IAC 18-1-35; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 28. 45 IAC 18-1-36 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-36 "Seal card" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 36. "Seal card" means a board or placard used with pull-tabs that contains a seal or seals, which when removed or opened reveal predesignated winning numbers, letter, symbols, or monetary denominations. The seal card serves as the game flare and must contain the information required in section 24 of this rule unless the manufacturer provides an additional flare containing the required information. A seal card may not be electronically generated. *(Department of State Revenue; 45 IAC 18-1-36; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 29. 45 IAC 18-1-37 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-37 "Serves a majority of counties in Indiana" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 37. "Serves a majority of counties in Indiana" means that a nationally recognized charitable organization must do the following:

(1) Maintain an office with a mailing address, which is open for business during posted business hours.

(2) Directly assist selected individuals or conducts other charitable activity.

Both services must be continuously available and ongoing in at least forty-seven (47) Indiana counties. *(Department of State Revenue; 45 IAC 18-1-37; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 30. 45 IAC 18-1-38 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-38 "Suspend" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 38. "Suspend" means that the qualified organization cannot conduct any gaming events or hold a license for a period of time specified by the department. The period of suspension begins at the time the organization receives notice from the department or when the organization exhausts all administrative remedies, whichever is later. *(Department of State Revenue; 45 IAC 18-1-38; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 31. 45 IAC 18-1-39 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-39 "Tip board" defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 39. "Tip board" means a board, placard, or other device containing a seal that:

(1) conceals the winning number or symbol; and

(2) serves as the game flare for a tip board game.

(Department of State Revenue; 45 IAC 18-1-39; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)

SECTION 32. 45 IAC 18-1-40 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-40 "Tip board ticket" defined

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 40. "Tip board ticket" is a single folded or banded ticket, or multi-ply card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol, or set of symbols, some of which have been designated in advance and at random as prize winners. A tip board ticket may not be electronically generated. *(Department of State Revenue; 45 IAC 18-1-40; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306)*

SECTION 33. 45 IAC 18-1-41 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-41 "Value" defined

Authority: IC 4-32-7-3
Affected: IC 4-32-6

Sec. 41. "Value", when used in connection with the word "prize", means the retail price of the property given as the prize when the prize is other than money. This definition applies whether the property given as the prize is purchased or donated for the event. If the prize given is money, then the value of the prize is the sum of money regardless of any losses by the player. *(Department of State Revenue; 45 IAC 18-1-41; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306)*

SECTION 34. 45 IAC 18-1-42 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-42 "Wager" defined

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 42. "Wager" means risking money or other property for gain, contingent in whole or in part upon chance, but it does not include participating in a bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants. *(Department of State Revenue; 45 IAC 18-1-42; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306)*

SECTION 35. 45 IAC 18-1-43 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-43 "Worker" defined

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9; IC 4-32-6-24

Sec. 43. (a) In addition to the meaning set forth in IC 4-32-6-24, "worker" means a member of a qualified organization who is:

(1) an Indiana resident; or

(2) if an individual is not a resident of Indiana, he or she may be a worker only if the qualified organization ensures that:

(A) the individual is in good standing with the department;

(B) the individual is in good standing with the taxing authority of the state in which the individual resides; and

(C) the individual will provide the department with his or her state tax returns upon request. Failure to provide such returns will result in the worker being precluded from associating with charity gaming in Indiana for a period of not less then *[sic.]* **one (1) year.**

(b) Nothing in this section shall be construed to preclude a qualified organization from employing up to three (3) Indiana law enforcement officers or private detectives properly licensed in Indiana to perform security services during an allowable event. *(Department of State Revenue; 45 IAC 18-1-43; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306)*

SECTION 36. 45 IAC 18-2-1 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-2-1 Application by qualified organization

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9-18

Sec. 1. (a) To obtain a license to operate an allowable event, a qualified organization must submit a written application on a form prescribed by the department.

(b) The application shall include the following information:

(1) The name and address of the organization.

(2) The names, ~~and~~ addresses of the officers of the organization.

(3) The type of event ~~that~~ the organization proposes to conduct.

(4) The location at which the organization will conduct the event.

(5) The dates and time for the proposed event.

(6) Sufficient facts for the department to determine that the organization is a qualified organization, including, but not limited to, the following:

(A) The organization's not-for-profit number.

(B) A letter from the Internal Revenue Service stating that the organization is exempt from taxation under Section 501 of the Internal Revenue Code.

(C) Proof that the organization has been in existence for five (5) or more years.

(D) A copy of the organization's bylaws or articles of incorporation.

(E) The name of each proposed operator, and sufficient

facts to determine that the person is qualified to be an operator.

(F) A sworn statement by the presiding officer and secretary of the organization attesting to the eligibility of the organization, including the nonprofit character of the organization.

(G) Any other information that the department may require.

(c) A license is not required if the following conditions are met:

(1) A fee is not charged for the event.

(2) The value of all prizes awarded does not exceed ~~one hundred~~ **one thousand** dollars ~~($100).~~ **($1,000) for a single event and no more than three thousand dollars ($3,000) in a calendar year.**

(d) Although a license is not required under subsection (c), a qualified organization is required to obtain an exemption letter from the department before holding such an event. The department may issue the exemption letter on an annual basis if the qualified organization shows that it holds such an event on a continuous basis throughout the year.

(e) If an event meets the conditions required by subsection (c) and an exemption letter is issued under subsection (d), 45 IAC 18-3-2 shall not apply to the conducting of that event. *(Department of State Revenue; 45 IAC 18-2-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1369; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306)*

SECTION 37. 45 IAC 18-3-4 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-4 Calendar raffle; sale of tickets, calendars, and drawings for prizes

Authority: IC 4-32-7-3
Affected: IC 4-32

Sec. 4. (a) This section and sections 5 and 6 of this rule apply to calendar raffles.

(b) All calendars should be identical in form and include the following:

(1) The number of the license issued by the department.

(2) The name and address of the sponsoring organization.

(3) The price of the calendar and the discounted price, if any, of multiple calendar purchases.

(4) The place for the purchaser to enter his or her name and address.

(5) The date, time, and place of the drawings.

(c) Each calendar sold by an organization shall include a separate identification number, printed on both the purchaser's and the organization's portion of the calendar, numbered consecutively in relation to the other calendars for the same drawing.

(d) No calendar may exceed ten dollars ($10) in cost for each month covered by the calendar.

(e) No person may sell a calendar unless authorized by a licensed organization.

(f) Tickets for a calendar raffle may not be offered for sale more than one hundred eighty (180) days before the raffle drawing.

(g) A calendar relating to a specific calendar raffle may not be sold after a drawing has taken place for any date on the calendar.

(h) The calendar shall be printed with the prize amount for each date on which a prize will be awarded.

(i) A calendar may be sold that either designates a prize amount for every day in a calendar period or for a smaller number of specifically designated days in a calendar period.

(j) The calendars sold for a specific calendar raffle shall have identical prize dates printed on all calendars sold.

(k) A licensed organization may not change any date on which a prize will be awarded or the amount of the designated prize after the organization has begun the sale of calendars.

(l) A licensed organization shall conduct drawings for all designated prize dates and award the prize amount that is printed on the calendar for each date.

(m) The purchaser of a calendar need not be present at the drawing to win a prize.

(n) If a calendar raffle drawing is canceled, the organization shall refund the receipts to the calendar purchasers.

(o) The organization that holds a calendar raffle drawing shall furnish a list of prize winners to each calendar holder who provides the organization with a self-addressed stamped envelope and requests the list. *(Department of State Revenue; 45 IAC 18-3-4; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2307)*

SECTION 38. 45 IAC 18-3-5 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-5 Replacement of tickets in the drawing container

Authority: IC 4-32-7-3
Affected: IC 4-32

Sec. 5. A licensed organization shall place a ticket or stub that has been drawn for a specific date back into the container so that the purchaser of that ticket or stub will

have a chance to win again on all subsequent drawing dates. *(Department of State Revenue; 45 IAC 18-3-5; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2307)*

SECTION 39. 45 IAC 18-3-6 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-6 Refunds
Authority: IC 4-32-7-3
Affected: IC 4-32

Sec. 6. (a) A licensed organization, which has sold a calendar for a specific calendar raffle and subsequently decides not to conduct one (1) or more drawings printed on the calendar, shall refund the complete purchase price to each purchaser.

(b) A licensed organization may not deduct from a refund to a purchaser a handling charge or other amount relating to the expense incurred by the organization in the sale of a calendar. *(Department of State Revenue; 45 IAC 18-3-6; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2308)*

SECTION 40. 45 IAC 18-3-7 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-7 Use of proceeds
Authority: IC 4-32-7-3
Affected: IC 4-32-9-16

Sec. 7. (a) In accordance with IC 4-32-9-16, as a condition of receiving a charity gaming license or nonlicense letter issued on or after May 1, 2003, the following minimum percentage of charitable gaming gross receipts shall be used for those lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized, or those expenses relating to the acquisition, construction, maintenance, or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community, or educational purposes:

(1) Five percent (5%) for organizations with annual gross receipts less than one hundred fifty thousand dollars ($150,000).

(2) Eight percent (8%) for organizations with annual gross receipts between one hundred fifty thousand dollars ($150,000) and five hundred thousand dollars ($500,000).

(3) Ten percent (10%) for organizations with annual gross receipts over five hundred thousand dollars ($500,000).

Unless an organization has derived no gross receipts in the prior fiscal year, the gross receipts of the most recently completed fiscal year shall be used to determine the applicable percentage for the use of proceeds requirement. An organization with no prior charitable gaming activity shall be subject to a five percent (5.0%) minimum use of proceeds requirement.

(b) If an organization fails to meet the minimum use of proceeds requirement, its license shall be suspended or revoked and no further licensed or unlicensed events may be held.

(c) Except as provided in subsection (b), if an organization is within less than one (1) percentage point of the minimum use of proceeds requirement for a given fiscal year, it may request a one-time approval to make up the deficiency (in dollars) in the following fiscal year. If such approval is granted, the deficiency will be added to the percentage requirement for the following year and the permit shall not be suspended.

(d) Failure to meet the required percentage in the year following such approval shall result in a one (1) year suspension. *(Department of State Revenue; 45 IAC 18-3-7; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2308; errata filed Mar 10, 2003, 11:43 a.m.: 26 IR 2375)*

SECTION 41. 45 IAC 18-3-8 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-8 Specific uses of proceeds
Authority: IC 4-32-7-3
Affected: IC 4-32

Sec. 8. (a) All payments by a qualified organization as use of proceeds must be made by check written from the organization's charitable gaming account.

(b) Use of proceeds payments may be made for scholarship funds or the future acquisition, construction, remodeling or improvement of real property or the acquisition of other equipment or vehicles to be used for religious, charitable, educational or community purposes. An organization may obtain department approval to establish a special fund account or an irrevocable trust fund for special circumstances. Transfers a special account or an irrevocable trust fund may be included as a use of proceeds if the payment is authorized by an organization's board of directors.

(c) No payments made to a special fund account shall be withdrawn for any purpose other than the specified purpose unless prior notification is made to the department.

(d) Expenditures of charitable gaming funds for social or recreational activities, or for events, activities, or programs that are open primarily to an organization's members and their families, shall not qualify as use of proceeds unless substantial benefit to the community is demonstrated.

(e) Expenditures of charitable gaming funds for salaries or honoraria to officers, directors, members, or employees of the qualified organization shall not qualify as use of proceeds.

(f) Payments made to or on behalf of indigent or sick or deceased members or their immediate families shall be allowed as use of proceeds up to one percent (1%) of an organization's prior year gross receipts provided they are approved by the board of directors and the specific need is documented. Organizations may obtain prior department approval to exceed the one percent (1%) limit in special cases.

(g) Payments made directly for the benefit of an individual member, member of his or her family or person residing in his or her household shall not be allowed as a use of proceeds unless authorized by law.

(h) Use of proceeds payments by an organization shall not be made for any activity that is prohibited by federal, state, or local laws or for any activity that attempts to influence or finance directly or indirectly political parties or committees or the election or reelection of any person who is or has been a candidate for public office. This subsection does not apply to bona fide political organizations.

(i) Organizations shall provide details of use of proceeds with the annual financial report.

(j) The department may disallow a use of proceeds payment to be counted against the minimum percentage referred to in section 7 of this rule.

(k) If any payment claimed as use of proceeds is subsequently disallowed, an organization may be allowed additional time as specified by the department to meet minimum use of proceeds requirements. *(Department of State Revenue; 45 IAC 18-3-8; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2308)*

SECTION 42. 45 IAC 18-4-1 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-4-1 Records of qualified organization
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 1. (a) A qualified organization must maintain adequate records of all financial aspects of a qualified event and report such information to the department on forms prescribed by the department. The organization must set up a separate account to account for all proceeds and expenditures of the qualified event. The records that must be kept include the gross receipts from each type of activity conducted at the allowable event, the prize payout, and the net receipts to the organization. Also, accountable are any rental costs associated with conducting the allowable event, including, but not limited to, a facility lease and the lease of tangible personal property.

(b) The reports are due thirty (30) days after the expiration date listed on the annual bingo license or, in the case of a special event license, ten (10) days after the special event is concluded.

(c) A qualified organization shall use Schedule CG-NSR (Charity Gaming Nightly Summary Report).

(d) The department will be granted unrestricted access to all records, including, but not limited to, the following:
(1) Membership information.
(2) Financial records.
(3) Receipts for the purchase of bingo supplies, punchboards, pull-tabs, and tip boards.

(e) An individual, or an employee, officer, or member of a corporate or partnership licensed entity who has a duty to remit gaming card excise tax to the department, holds the tax in trust for the state, and is personally liable for the payment of the tax plus any penalties and interest attributable to the tax. *(Department of State Revenue; 45 IAC 18-4-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1375; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2309)*

SECTION 43. 45 IAC 18-4-2 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-4-2 Records of manufacturer or distributor
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-7-4

Sec. 2. (a) An entity licensed as a manufacturer or distributor must keep records satisfactory to the department. The records must include the following:
(1) Sales invoices, including the following:
(A) Each licensee must use a general sales invoice ~~which~~ **that** is:
(i) numbered consecutively; and
(ii) prepared in at least two (2) parts, one being issued to the customer and the other retained in an invoice file.
(B) Each licensee must use a general sales invoice ~~which~~ **that** sets out the following information:
(i) The date of sale.
(ii) The customer name and business address.
(iii) A full description of each item sold, including the serial numbers of the products sold.
(iv) The quantity and sales price of each item.
(v) The manufacturer's or distributor's license number.
(vi) The customer's license number.
(vii) The gaming card excise tax due on the sale.
(2) Credit memoranda prepared in the same detail as sales invoices.
(3) A sales journal containing at least the following, by calendar month:
(A) The date of sale.
(B) The invoice number of the sale.
(C) The customer name or account number.

(D) The total amount of the invoice.

(E) The total amount of the gaming card excise tax due on the sale.

(4) A complete list of the persons representing the licensee.

(5) Purchase records documenting that all bingo supplies, equipment, pull-tabs, punchboards, and tip boards were purchased from either a licensed manufacturer or another licensed distributor.

(b) A serial number printed on an item sold must be identifiable with the sales invoice reflecting the sale of the specific item.

~~(c) The gross amount of sales to each customer must be kept on a calendar month basis.~~

~~(d)~~ **(c)** Records are required to be maintained until the later of the following:

(1) ~~Four (4)~~ **Six (6)** years after the year in which they are created.

(2) The end of the audit if such records are under audit.

(d) Marketing sheets that show the expected gross income, payout, net income, and number of deals in the pull-tab game, which have been sold to the qualified organization. The term "payout" does not include the cost of the game itself.

(e) If a licensed manufacturer or distributor destroys, discontinues, or otherwise tenders unusable, bingo supplies, punchboards, pull-tabs, or tip boards, sold in Indiana then the manufacturer or distributor must provide the department with a written list of the items destroyed, including quantity, description of the items and serial numbers, and the date on which the items were destroyed.

(f) A licensed manufacturer or distributor must keep the department informed of its location and where the records will be stored if the manufacturer ceases business.

(g) The foregoing records must be produced upon request by the department or its representative.

(h) Manufacturers or distributors of supplies, devices, or equipment, as described in IC 4-32-7-4(a) to be used in charity gaming in Indiana, must submit monthly reports, as prescribed by the department, detailing their sales of punchboards, pull-tabs, and tip boards to Indiana not-for-profit organizations. *(Department of State Revenue; 45 IAC 18-4-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1375; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2309)*

SECTION 44. 45 IAC 18-5-2 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-5-2 Gaming card excise tax

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-15

Sec. 2. (a) An excise tax is imposed on ~~the distribution of pull-tabs, punchboards, and tip boards~~ **a licensed distributor or manufacturer** in the amount of ten percent (10%) of the ~~wholesale~~ price ~~for the~~ **paid by the qualified organization that purchases** pull-tabs, punchboards, or tip boards. ~~that are sold to a qualified organization. The tax is effective June 1, 1992, for all sales that occur after May 31, 1992.~~

(b) Sales of bingo supplies and bingo equipment by manufacturers or distributors are not subject to the gaming card excise tax.

~~(c) A licensed entity supplying pull-tabs, punchboards, or tip boards is liable for the tax. The tax is imposed at the time the licensed entity:~~

~~(1) brings or causes the pull-tabs, punchboards, or tip boards to be brought into Indiana for distribution;~~

~~(2) manufactures pull-tabs, punchboards, or tip boards in Indiana for distribution; or~~

~~(3) transports pull-tabs, punchboards, or tip boards to qualified organizations in Indiana for resale by those qualified organizations.~~

~~(d)~~ **(c)** The gaming card excise tax is due twenty (20) days after the end of the calendar month in which the tax is imposed. It shall be remitted with the forms prescribed by the department.

~~(e)~~ **(d)** All payments must be in the form of a check, a draft, or another financial instrument approved by the department prior to payment.

~~(f)~~ **(e)** The department may, at any time, perform an audit of the books of a licensed entity to ensure compliance with IC 4-32-15. *(Department of State Revenue; 45 IAC 18-5-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1376; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2310)*

SECTION 45. 45 IAC 18-6-3 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-6-3 License revocation

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32; IC 6-8.1

Sec. 3. (a) The proposed action of the department to impose a civil penalty under this article is subject to review under IC 6-8.1. However, the licensee has only seventy-two (72) hours from its receipt of the decision, intended decision, or other action to file a written protest. Except as provided in subsection (b), as long as the matter is under protest, the licensee can continue to operate until all administrative appeals have been exhausted.

(b) The department may determine at any time that an emergency exists that requires the immediate termination of a license. Effective with the receipt of the department's decision to terminate its license, a licensee must cease all operations that were previously authorized under the license.

(c) An emergency requiring the immediate termination of a license will be deemed to exist under any of the following circumstances:

(1) The information provided on the application for license is found to be false or misleading.

(2) The appropriate fees are not paid.

(3) An entity other than the qualified organization is conducting the allowable event.

(4) The qualified organization is exceeding its allowable expenditures with respect to an allowable event.

(5) The qualified organization is exceeding the number of days that it can conduct an allowable event.

(6) The organization has conducted an allowable event at the same place and on the same day as another qualified organization.

(7) Net proceeds are being used for purposes other than the lawful purposes of the organization.

(8) Accurate reports are not being filed with the department in a timely manner.

(9) Receipts and expenditures from an allowable event are not being kept in a separate and segregated account set up for that purpose.

(10) An allowable event is being held in a county other than where the qualified organization's principal office is located.

(11) An operator or worker does not meet the requirements of IC 4-32.

(12) Prizes awarded are exceeding the limitations imposed by IC 4-32.

(13) Fails or refuses to comply with the record keeping requirement of IC 4-32.

(14) Fails or refuses to allow inspection of records kept under IC 4-32.

~~(13)~~ **(15)** Any other violation of IC 4-32 or this article considered to be of a serious nature by the department.

(d) If a licensee does not file a formal protest of the department's proposed termination of its license within the time limit imposed by subsection (a), then such inaction may be deemed an admission of the alleged violation and the department may issue an immediate termination of the license.

(e) The license of a manufacturer or distributor shall be terminated if there is a change in ownership and the department determines that an undesirable party is assuming the privileges of the license held by the manufacturer or distributor. *(Department of State Revenue; 45 IAC 18-6-3; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1376; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2310)*

SECTION 46. 45 IAC 18-8 IS ADDED TO READ AS FOLLOWS:

Rule 8. Administrative Procedures

45 IAC 18-8-1 Representation of a qualified organization before the department

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 1. (a) There are no formal qualifications for individuals to represent a qualified organization before the department. Prior to the department releasing any information to any person representing a qualified organization or licensee, or otherwise appearing or communicating with the department on a qualified organization or licensee's behalf, the representative must present a properly executed power of attorney, or, if the person is an attorney at law, then an appearance must be filed. No information will be released to anyone other than an officer or director of the qualified organization, unless a properly executed power of attorney or appearance has been presented. Power of attorney and appearance forms are available from the department.

(b) Casual conversations with a qualified organization or licensee's representative who does not have an appearance on file are permitted. However, specific information will not be disclosed.

(c) The appearance must contain the following information:

(1) The name, address, and taxpayer identification number of the qualified organization.

(2) The name, address, and telephone number of the qualified organization's representative or representatives. A corporation, law firm, or accounting firm must name at least one (1) individual as the representative.

(3) Any restrictions or limitations placed upon the representative when acting on behalf of the qualified organization.

(4) The appearance must be signed by an officer of the qualified organization or an individual authorized to execute a power of attorney. The department may require that the signature be notarized by a notary public if the representative is not a licensed attorney or certified public accountant.

(d) If the qualified organization executes an appearance, the department will communicate primarily with the organization's representative. *(Department of State Revenue; 45 IAC 18-8-1; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2311)*

45 IAC 18-8-2 Notice

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 2. If the department believes that a qualified organization or licensee has improperly reported a listed tax liability, the department may, within the prescribed statute of limitations period, issue to such qualified organization or licensee a formal notice that the department proposes to assess additional tax. The formal notice shall be based on the best information available to the department. Any written advisement, which informs the qualified organization or licensee of the amount of the proposed assessment for a particular tax period, shall constitute a formal notice.

A formal notice shall be sent through the United States mail. *(Department of State Revenue; 45 IAC 18-8-2; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2311)*

45 IAC 18-8-3 Protests
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 3. (a) An entity has seventy-two (72) hours, as calculated in section 9 of this rule, from the date the notice of violation or department order is received to protest the department's findings under IC 4-32. The calculation of the seventy-two (72) hours begins at 8 a.m. the day following the receipt of the department's notice.

(b) All protests must be in writing and include the organization's name, taxpayer identification number, address, and the basis for objections to the department's findings.

(c) If the organization desires a hearing before the department, the protest shall so state. If an application or reapplication has been denied, the organization may, instead of a hearing, refile its application or pay the civil fines. Protests should be submitted to the charity gaming hearing officer.

(d) The department may correspond with the entity before the hearing, either in writing or orally, in order to gather information and clarify issues presented in the protest letter. *(Department of State Revenue; 45 IAC 18-8-3; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2312)*

45 IAC 18-8-4 Hearings
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 4. (a) A qualified organization receiving a notice from the department shall have a right to protest and have a hearing of the facts and issues before the department makes a final determination.

(b) The department's hearing procedures are as follows:
(1) Upon receipt of a timely protest requesting a hearing with the department, the organization's protest will be forwarded to the charity gaming hearing officer.
(2) The charity gaming hearing officer shall set a date for a hearing of the protest, and the qualified organization will be notified of the time and place thereof.
(3) Once a hearing date has been set, extensions of time, continuances, and adjournments may be granted at the discretion of the department upon a showing of good cause.
(4) If the qualified organization or its duly authorized representative wishes to file legal memoranda with the department concerning the facts, issues, and arguments of its protest, that material must be submitted at least five (5) days prior to the date of the hearing.
(5) If an organization or its representative fails to appear at a hearing without securing a continuance, a default judgment will be issued in favor of the department.
(6) The hearing will be conducted in an informal manner. The purpose of the hearing is to establish the qualified organization's specific objections and the reason for those objections.
(7) The burden of proving that the department's findings are incorrect rests with the organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.
(8) If an organization fails to appear for a scheduled hearing, the petitioner will be assessed the costs of holding the hearing in their absence. An organization will no longer be in good standing with the department if they fail to pay the costs of conducting the hearing within thirty (30) days.
(Department of State Revenue; 45 IAC 18-8-4; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2312)

45 IAC 18-8-5 Department's findings
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 5. The protest will not be resolved at the hearing. The department will consider all facts and arguments presented and a decision will be rendered in writing described as a departmental order. *(Department of State Revenue; 45 IAC 18-8-5; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2312)*

45 IAC 18-8-6 Rehearing
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 6. (a) After receipt of the departmental order, the taxpayer may petition for a rehearing. The petition for rehearing must be timely filed according to section 3 of this rule. A rehearing will be granted by the department only under unusual circumstances. The taxpayer must allege that certain material facts or circumstances were not presented or considered in the original proceedings. A rehearing is granted at the discretion of the department.

(b) If a rehearing is granted, the rehearing will not be held de novo unless abuse of discretion is alleged. When such abuse is alleged, the evidence will not be reweighed. Instead, the department will only consider evidence most favorable to the department's position and reverse only if the decision is clearly against the logic and effect of the facts and circumstances. However, if the taxpayer presents new and relevant evidence as grounds for reversal, the new evidence will be weighed in light of all relevant facts and circumstances. *(Department of State Revenue; 45 IAC 18-8-6; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2312)*

45 IAC 18-8-7 Statute of limitations and retention of records

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32; IC 6-8.1-5-2

Sec. 7. Except as otherwise provided in IC 6-8.1-5-2, the statute of limitations for the assessment of a listed tax is governed by 45 IAC 15-5-7. There is no statute of limitations imposed upon the department investigating a violation of IC 4-32. A qualified organization must retain its business records in accordance with the following schedule:

(1) The following must be retained for ten (10) years:

(A) IT-35AR.

(B) ST-103.

(C) Nightly game sheets.

(D) Federal Form 990.

(2) The following must be retained for three (3) years:

(A) Seal cards.

(B) Flare cards.

(C) Schedule CG-NSR.

(D) All other documents kept in the regular course of conducting charity gaming events.

(Department of State Revenue; 45 IAC 18-8-7; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2313)

45 IAC 18-8-8 Holidays

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 1-1-9-1; IC 4-32

Sec. 8. Any act that is required to be performed under IC 4-32 may be performed on the succeeding business day if the due date falls on any state holiday listed in IC 1-1-9-1, any other national legal holiday, or a Saturday or Sunday. *(Department of State Revenue; 45 IAC 18-8-8; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2313)*

45 IAC 18-8-9 Date of filing

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 9. (a) If a document, which is required to be filed with the department by a prescribed date, is mailed through the United States mail, the date displayed on the post office cancellation mark establishes an irrebuttable presumption that the displayed date was the date on which the document was filed. If a document is delivered to the department in any other manner than the United States mail, the department shall stamp the document in such a fashion as to display the date the document is received. This date stamped by the department shall establish an irrebuttable presumption as to the date the document is received.

(b) If a document is sent through the United States mail by registered mail, certified mail, or certificate of mailing, then such date of registration, certification, or certificate shall be conclusive as to the date of filing. Such date as authenticated by the United States post office records shall be conclusive even in the case of a conflicting postmark date.

(c) If a document mailed through the United States mail is physically received after the due date without a legibly correct postmark, the person who mailed the document may show the document was mailed on or before the due date by reasonable evidence. Examples of such evidence include, but are not limited to, the following:

(1) Testimony of the party.

(2) Testimony of disinterested third parties.

(3) Evidence and/or testimony from the United States post office.

(4) Any other evidence which tends to establish the date of filing.

(d) If a document is mailed to, but never received by the department, the person sending the document may produce reasonable evidence to show that the document was mailed on or before the due date. Such evidence as used to show the correct postmark date in 45 IAC 18-6-3(c) might also be used to establish the mailing of a document. In addition to showing that the document was deposited in the United States mail on or before the due date, the person must file a duplicate document with the department within thirty (30) days from the date the department sends the person notice that the prescribed documents were not received. *(Department of State Revenue; 45 IAC 18-8-9; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2313)*

SECTION 47. THE FOLLOWING ARE REPEALED: 45 IAC 18-1-2; 45 IAC 18-1-3; 45 IAC 18-1-4; 45 IAC 18-1-5; 45 IAC 18-1-6; 45 IAC 18-1-7; 45 IAC 18-1-8; 45 IAC 18-3-3; 45 IAC 18-6-1; 45 IAC 18-6-2.

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Incorporated Documents Filed with Secretary of State: None

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #01-402(F)

DIGEST

Amends 50 IAC 2.3-1-1 and 50 IAC 2.3-1-2 to update the adoption date of matters incorporated by reference as a result of

minor changes and corrections to the 2002 Real Property Assessment Manual and the Real Property Assessment Guidelines for 2002–Version A, published by the state board of tax commissioners and originally dated May 10, 2001, and to eliminate reference to the shelter allowance as required by House Enrolled Act 1001(ss). Effective 30 days after filing with the secretary of state.

50 IAC 2.3-1-1
50 IAC 2.3-1-2

SECTION 1. 50 IAC 2.3-1-1, AS AMENDED AT 26 IR 6, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

50 IAC 2.3-1-1 Applicability, provisions, and procedures
Authority: IC 4-22-2-21; IC 6-1.1-4-26; IC 6-1.1-31; IC 6-1.1-35-1
Affected: IC 5-3-1; IC 6-1.1-4; IC 6-1.1-15; IC 6-1.1-31-5; IC 6-1.1-31-6

Sec. 1. (a) This article applies to the assessment of all real property under IC 6-1.1-4.

(b) All real property assessed after February 28, 2002, must be assessed in accordance with the 2002 Real Property Assessment Manual, incorporated by reference under section 2 of this rule.

(c) In addition to the requirements established in the 2002 Real Property Assessment Manual and to fully address the requirements of IC 6-1.1-31-6, the county assessor must select a set of more specific guidelines to be applied by assessing officials in connection with the assessment of real property in their county. These guidelines must:

(1) contain provisions for the determination of true tax value following the instructions in the section of the 2002 Real Property Assessment Manual entitled "Approval of Mass Appraisal Methods"; and

(2) be approved by the state board of tax commissioners.

The state board of tax commissioners has approved the provisions contained in the "Real Property Assessment Guidelines for 2002–Version 'A'" dated May 10, 2001, **as amended to and including October 1, 2002,** incorporated by reference under section 2 of this rule. Other real property assessment guidelines proposed by a county must be submitted to, and approved by, the state board of tax commissioners before they may be used for the assessment of real property in that county.

(d) The purpose of this rule is to accurately determine "True Tax Value" as defined in the 2002 Real Property Assessment Manual, not to mandate that any specific assessment method be followed. The intent of the state board of tax commissioners is that any individual assessment is to be deemed accurate if it is a reasonable measure of "True Tax Value" as defined in the 2002 Real Property Assessment Manual. No technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of "True Tax Value", and failure to comply with the Real Property Assessment Guidelines for 2002–Version 'A' or other guidelines approved under subsection (c) does not in itself show that the assessment is not a reasonable measure of "True Tax Value".

(e) After July 1, 2001, and before November 1, 2001, the county assessor shall make the selection required under subsection (c). The method selected under subsection (c) must be used by all the assessing officials within the county, will serve as the appropriate method for calculating an assessment that is appealed under IC 6-1.1-15, and govern throughout the effective period of the 2002 reassessment. No method, other than the method selected by the county assessor under subsection (c), may be used for the assessment of real property under IC 6-1.1-4 within the county. Before November 1, 2001, the county assessor shall publish the selected method in accordance with IC 5-3-1 and notify the state board of tax commissioners, in writing, of the selection.

(f) If the county assessor elects, pursuant to IC 6-1.1-31-5, to consider additional factors not provided for in this rule or the manual incorporated herein by reference, the county assessor shall submit a written request for approval of such factors by the state board of tax commissioners, at least sixty (60) days before the assessments are made, and no later than January 1, 2002. *(Department of Local Government Finance; 50 IAC 2.3-1-1; filed May 23, 2001, 4:01 p.m.: 24 IR 3015; filed Aug 26, 2002, 10:36 a.m.: 26 IR 6; filed Feb 10, 2003, 3:50 p.m.: 26 IR 2314)*

SECTION 2. 50 IAC 2.3-1-2 IS AMENDED TO READ AS FOLLOWS:

50 IAC 2.3-1-2 Incorporation by reference
Authority: IC 4-22-2-21; IC 6-1.1-4-26; IC 6-1.1-31; IC 6-1.1-35-1
Affected: IC 6-1.1

Sec. 2. (a) As used in this article, "2002 Real Property Assessment Manual" refers to the 2002 Real Property Assessment Manual, published by the state board of tax commissioners and dated May 10, 2001, **as amended to and including October 1, 2002. The amendments adopted as of October 1, 2002, eliminate references to the shelter allowance as required by House Enrolled Act 1001(ss).**

(b) As used in this article, "Real Property Assessment Guidelines for 2002–Version 'A'" refers to the Real Property Assessment Guidelines for 2002–Version 'A', published by the state board of tax commissioners and dated May 10, 2001, **as amended to and including October 1, 2002. The amendments incorporate minor changes and corrections to the Real Property Assessment Guidelines for 2002–Version 'A', published by the state board of tax commissioners and originally dated May 10, 2001, and eliminate references to the shelter allowance as required by House Enrolled Act 1001(ss).** The Real Property Assessment Guidelines for

2002–Version 'A' are Exhibit 1 to the 2002 Real Property Assessment Manual.

(c) The 2002 Real Property Assessment Manual and Real Property Assessment Guidelines for 2002–Version 'A' is incorporated by reference under the authority of IC 4-22-2-21(a)(3). *(Department of Local Government Finance; 50 IAC 2.3-1-2; filed May 23, 2001, 4:01 p.m.: 24 IR 3016; filed Feb 10, 2003, 3:50 p.m.: 26 IR 2314)*

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TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #02-240(F)

DIGEST

Amends 50 IAC 2.3-1-1 concerning the 2002 Real Property Assessment Manual to provide county assessors more flexibility in selection of methodology in real property assessment. Effective 30 days after filing with the secretary of state.

50 IAC 2.3-1-1

SECTION 1. 50 IAC 2.3-1-1, AS AMENDED AT 26 IR 2314, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

50 IAC 2.3-1-1 Applicability, provisions, and procedures
Authority: IC 4-22-2-21; IC 6-1.1-4-26; IC 6-1.1-31; IC 6-1.1-35-1
Affected: IC 5-3-1; IC 6-1.1-4; IC 6-1.1-15; IC 6-1.1-31-6

Sec. 1. (a) This article applies to the assessment of all real property under IC 6-1.1-4.

(b) All real property assessed after February 28, 2002, must be assessed in accordance with the 2002 Real Property Assessment Manual, incorporated by reference under section 2 of this rule.

(c) In addition to the requirements established in the 2002 Real Property Assessment Manual and to fully address the requirements of IC 6-1.1-31-6, the county assessor must select a set of more specific guidelines to be applied by assessing officials in connection with the assessment of real property in their county. These guidelines must:

(1) contain provisions for the determination of true tax value following the instructions in the section of the 2002 Real Property Assessment Manual entitled "Approval of Mass Appraisal Methods"; and

(2) be approved by the state board of tax commissioners.

The state board of tax commissioners has approved the provisions contained in the "Real Property Assessment Guidelines for 2002–Version 'A'" dated May 10, 2001, as amended to and including October 1, 2002, incorporated by reference under section 2 of this rule. Other real property assessment guidelines proposed by a county must be submitted to, and approved by, the state board of tax commissioners before they may be used for the assessment of real property in that county.

(d) The purpose of this rule is to accurately determine "True Tax Value" as defined in the 2002 Real Property Assessment Manual, not to mandate that any specific assessment method be followed. The intent of the state board of tax commissioners is that any individual assessment is to be deemed accurate if it is a reasonable measure of "True Tax Value" as defined in the 2002 Real Property Assessment Manual. No technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of "True Tax Value", and failure to comply with the Real Property Assessment Guidelines for 2002–Version 'A' or other guidelines approved under subsection (c) does not in itself show that the assessment is not a reasonable measure of "True Tax Value".

(e) After July 1, 2001, and before November 1, 2001, the county assessor shall make the selection required under subsection (c). The method selected under subsection (c) must be used by all the assessing officials within the county, will serve as the appropriate method for calculating an assessment that is appealed under IC 6-1.1-15, and govern throughout the effective period of the 2002 reassessment. No method, other than the method selected by the county assessor under subsection (c), may be used for the assessment of real property under IC 6-1.1-4 within the county. Before November 1, 2001, the county assessor shall publish the selected method in accordance with IC 5-3-1 and notify the state board of tax commissioners, in writing, of the selection.

(f) ~~If~~ The county assessor ~~elects, pursuant to IC 6-1.1-31-5, to~~ **may amend its selection of method of assessment or** consider additional factors not provided for in this rule or the manual incorporated herein by reference, **with the approval of the department of local government finance.** The county assessor shall submit a written request for approval of ~~such factors by the state board of tax commissioners,~~ **the selection of method or other factors to the department of local government finance** at least sixty (60) days before the assessments are made. ~~and no later than January 1, 2002.~~ *(Department of Local Government Finance; 50 IAC 2.3-1-1; filed May 23, 2001, 4:01 p.m.: 24 IR 3015; filed Aug 26, 2002, 10:36 a.m.: 26 IR 6; filed Feb 10, 2003, 3:50 p.m.: 26 IR 2314; filed Feb 10, 2003, 3:55 p.m.: 26 IR 2315)*

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Notice of Intent Published: 25 IR 4130
Proposed Rule Published: October 1, 2002; 26 IR 88
Hearing Held: October 29, 2002
Approved by Attorney General: January 31, 2003
Approved by Governor: February 6, 2003
Filed with Secretary of State: February 10, 2003, 3:55 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 52 INDIANA BOARD OF TAX REVIEW

LSA Document #02-206(F)

DIGEST

Adds 52 IAC to establish standards to govern the practice of representatives before the Indiana board of tax review. Effective 30 days after filing with the secretary of state.

52 IAC

SECTION 1. 52 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 52 INDIANA BOARD OF TAX REVIEW

ARTICLE 1. TAX REPRESENTATIVES

Rule 1. Definitions

52 IAC 1-1-1 Applicability
Authority: IC 6-1.5-6-1
Affected: IC 6-1.5

Sec. 1. The definitions in this rule apply throughout this article. *(Indiana Board of Tax Review; 52 IAC 1-1-1; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2316)*

52 IAC 1-1-2 "Board" defined
Authority: IC 6-1.5-6-1
Affected: IC 6-1.5-1-3

Sec. 2. "Board" refers to the Indiana board of tax review established under IC 6-1.5-1-3. References to the board in this rule shall, where necessary, include its predecessor agency, the state board of tax commissioners. *(Indiana Board of Tax Review; 52 IAC 1-1-2; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2316)*

52 IAC 1-1-3 "Department" defined
Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-30-1.1

Sec. 3. "Department" means the department of local government finance established under IC 6-1.1-30-1.1. *(Indiana Board of Tax Review; 52 IAC 1-1-3; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2316)*

52 IAC 1-1-4 "Practice before the board" defined
Authority: IC 6-1.5-6-1
Affected: IC 6-1.5; IC 6-1.1-15

Sec. 4. "Practice before the board" means participation in any matters connected with a presentation to the board or any of its members or employees relating to a client's rights, privileges, or liabilities under Indiana's property tax laws or rules. Such presentations include, but are not limited to, the following:

(1) Preparing and filing necessary documents, except personal property returns.

(2) Corresponding and communicating with the board.

(3) Representing a client at hearings, on-site inspections, and meetings.

The term does not include the activities of any local unit of government participating before the board. *(Indiana Board of Tax Review; 52 IAC 1-1-4; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2316)*

52 IAC 1-1-5 "Property tax assessment board of appeals" defined
Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-28-1

Sec. 5. "Property tax assessment board of appeals" means the county property tax assessment board of appeals established under IC 6-1.1-28-1. *(Indiana Board of Tax Review; 52 IAC 1-1-5; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2316)*

52 IAC 1-1-6 "Tax representative" defined
Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-2-4; IC 6-1.1-15; IC 6-1.1-26-2

Sec. 6. "Tax representative" means a person who represents another person at a proceeding before the board under IC 6-1.1-15. The term does not include:

(1) the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) that is the subject of the appeal;

(2) a permanent full-time employee of the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) who is the subject of the appeal;

(3) representatives of local units of government appearing on behalf of the unit or as the authorized representative of another unit;

(4) a certified public accountant, when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or

(5) an attorney who is a member in good standing of the Indiana bar or any person who is a member in good standing of any other state bar and who has been granted leave by the board to appear pro hac vice.

(Indiana Board of Tax Review; 52 IAC 1-1-6; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2316)

Rule 2. Tax Representatives

52 IAC 1-2-1 Practice requirements
Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-15-1; IC 6-1.1-15-12; IC 6-1.1-26-1

Sec. 1. (a) In order to practice before the board, a tax representative must:
(1) be properly certified by the department; and
(2) have a copy of a properly executed power of attorney from the taxpayer on the form prescribed by the board on file with the board before a hearing will be scheduled.

(b) Property tax representatives may not be certified to practice before the board for:
(1) matters relating to real and personal property exemptions claimed on a Form 132 or 136;
(2) claims that assessments or taxes are "illegal as a matter of law", whether brought on:
(A) a Form 133 pursuant to IC 6-1.1-15-12(a)(6);
(B) a Form 17-T pursuant to IC 6-1.1-26-1(4);
(C) a Form 130 pursuant to IC 6-1.1-15-1; or
(D) any other form;
(3) claims regarding the constitutionality of an assessment; or
(4) any other representation that involves the practice of law.

(c) Notwithstanding subsection (a)(1), the board may grant leave to practice before the board to a tax representative who is properly licensed or certified in another state. *(Indiana Board of Tax Review; 52 IAC 1-2-1; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2317)*

52 IAC 1-2-2 Communication with client or prospective client
Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-2-4; IC 6-1.1-15

Sec. 2. (a) No certified property tax representative shall, with respect to any matter relating to practice before the board, in any way use or participate in the use of any form of public communication containing a:
(1) false, fraudulent, unduly influencing, coercive, or unfair statement or claim; or
(2) misleading or deceptive statement or claim.

(b) A property tax representative shall advise the client or prospective client in writing, using a typeface of not less than 12-point, either on the power of attorney or in some other form that may be reasonably interpreted by the taxpayer (the property owner or person liable for the taxes under IC 6-1.1-2-4) to set forth the rights of the taxpayer with regard to his or her appeal, the statement, "I understand that by authorizing _____ to serve as my certified property tax representative, I am aware of and accept the possibility that the property value may increase as a result of filing an administrative appeal with the board. I further understand that the certified property tax representative is not an attorney and may not present arguments of a legal nature on my behalf. I understand that legal issues relating to my assessment that may now exist or may be discovered at some time in the future will not and cannot be addressed by the certified property tax representative, and that if not raised before the board may not be raised at a later stage of my assessment appeal.".

(c) The disclosure shall be signed by the taxpayer. The certified property tax representative shall provide the taxpayer with a copy of the disclosure and shall be required to provide a copy of the disclosure to the board upon request. Failure to provide a signed copy of disclosure upon request may be grounds for:
(1) denying the tax representative the right to represent the taxpayer with respect to the property subject to the pending administrative appeal; or
(2) a recommendation of disciplinary action to the department under 50 IAC 15-5-8.

(d) A disclosure properly filed or presented to the department by the tax representative in connection with the representation of the taxpayer in an appeal from a proceeding before the department or the property tax assessment board of appeals may be presented in lieu of the disclosure described in subsection (b). *(Indiana Board of Tax Review; 52 IAC 1-2-2; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2317)*

52 IAC 1-2-3 Prohibitions; obligations
Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-2-4; IC 6-1.1-15

Sec. 3. A certified tax representative shall:
(1) not knowingly misrepresent any information or act in a fraudulent manner;
(2) not prepare documents or provide evidence in a property assessment appeal unless the representative is authorized by the property owner (or person liable for the taxes under IC 6-1.1-2-4) to do so and any required authorization form has been filed;
(3) not knowingly submit false or erroneous information in a property assessment appeal;
(4) use the appraisal standards and methods required by rules adopted by the department or the board when the representative submits appraisal information in a property assessment appeal; and
(5) notify the property owner (or person liable for the taxes under IC 6-1.1-2-4) of all matters relating to the review of the assessment of taxpayers' property before the board, including, but not limited to, the following:
(A) The tax representative's filing of all necessary documents, correspondence, and communications with the board.
(B) The dates and substance of all hearings, on-site inspections, and meetings.

(Indiana Board of Tax Review; 52 IAC 1-2-3; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2317)

52 IAC 1-2-4 Contingent fees
Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-15

Sec. 4. (a) In the event a tax representative charges a contingent fee for any matter relating to practice before the board, the tax representative may not testify at a hearing without first disclosing the existence of the contingent fee arrangement.

(b) As used in this section, "contingent fee" includes a fee, whether accruing to the tax representative or to the entity with which the tax representative is affiliated, that is based on a percentage of the:
(1) refund obtained;
(2) taxes saved; or
(3) reduction in assessed value.

(c) Failure to disclose the existence of a contingent fee arrangement may result in the presumption that a contingent fee arrangement exists between the taxpayer and the tax representative. *(Indiana Board of Tax Review; 52 IAC 1-2-4; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2318)*

52 IAC 1-2-5 Certification; revocation
Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-15; IC 6-1.1-35.5-8

Sec. 5. (a) Upon recommendation of the board to the department, the following may be grounds for the department to deny, suspend, or revoke the certification of a tax representative:
(1) Violation of any rule of practice before the established *[sic.]* **under this article.**
(2) Gross incompetence in the tax representative's practice before the board.
(3) Dishonesty or fraud committed while practicing before the board.
(4) Violation of the standards of ethics or rules of solicitation adopted by the department or the board.

(b) If, after a hearing under the rules of the department, it is found that the tax representative has committed one (1) of the acts described in subsection (a), the certification of the tax representative may be subject *[sic., to]* **denial, suspension, or revocation on the same terms and conditions as if the violation were one committed in connection with practice before the property tax assessment board of appeals or the department.** *(Indiana Board of Tax Review; 52 IAC 1-2-5; filed Feb 13, 2003, 9:41 a.m.: 26 IR 2318)*

LSA Document #02-206(F)
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Proposed Rule Published: October 1, 2002; 26 IR 89
Hearing Held: October 30, 2002
Approved by Attorney General: February 5, 2003
Approved by Governor: February 10, 2003
Filed with Secretary of State: February 13, 2003, 9:41 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #02-122(F)

DIGEST

Amends 326 IAC 6-1-14 concerning particulate rules, nonattainment area limitations in Wayne County. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: March 1, 2000, Indiana Register (25 IR 2592).

Second Notice of Comment Period and Notice of First Hearing: July 1, 2002, Indiana Register (25 IR 3493).

Date of First Hearing: September 4, 2002.

Notice of Second Hearing: October 1, 2002 (26 IR 99).

Scheduled Date of Second Hearing: November 6, 2002.

Date of Second Hearing: December 4, 2002.

326 IAC 6-1-14

SECTION 1. 326 IAC 6-1-14 IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-1-14 Wayne County
Authority: IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 14. In addition to the emission limitations contained in section 2 of this rule, the following limitations apply to sources in Wayne County:

WAYNE COUNTY

Source	NEDS Plant ID	Point Input ID	Process	Emission Limits tons/yr	lbs/million BTU	grains/dscf
Belden Wire and Cable (office)	0003	1P	Oil Boiler 39 MMBTU/Hr.	8.0	0.015	
Dana Perfect Circle–Richmond	0004	2P	Cupola	51.50		0.133

Joseph H. Hill Co. PLT-A	0007	5P	3 Oil Boilers (Single Stack) 30 MMBTU/Hr.	1.40	0.015	
		6P	Oil Boiler 22.5 MMBTU/Hr.	1.0	0.015	
Joseph H. Hill Co. PLT-B	0031	7P	3 Oil Boilers (Single Stack) 175 MMBTU/Hr.	5.60	0.015	
Joseph H. Hill Co. PLT-C	0032	8P	Oil Boiler No. 1 19 MMBTU/Hr.	0.70	0.015	
		9P	Oil Boiler No. 2 7 MMBTU/Hr.	0.30	0.015	
Dana Perfect Circle–Hagerstown	0014	10P	Gas Boiler 50 MMBTU/Hr.	2.10	0.010	
Richmond Milestone Contractors	0008	13P	Rotary Dryer	50.80		0.158
Cambridge City Milestone Contractors	0028	14P	Rotary Dryer	67.4		0.218
Johns Manville Corporation	0006	15P	25 MMBTU/Hr. Natural Gas Boiler	1.5	0.0137	
		16P	Lines 2 and 3 Natural Gas Melt Furnaces	7.8		0.01
		17P	Line 6 Electric Melt Furnace	3.9		0.020
		19P	Line 3 Curing Oven	27.4		0.02
		20P	Line 6 Curing Oven	6.2		0.02
		21P	Line 2 Forming Process	58.3		0.02
		22P	Line 3 Forming Process	123.6		0.02
		23P	Line 6 Forming Process	45.4		0.02
Richmond State Hospital	0025	24P	(4 Gas/Oil Boilers) 123.4 MMBTU/Hr.	7.7	0.014	
Schrock Cabinet Company	0015	26P	Wood Boiler 10 MMBTU/Hr.	7.60	0.190	
		27P	Coal Boiler 10 MMBTU/Hr.	6.90	0.280	
Richmond Power & Light	0009	28P	Coal Boiler No. 1 385 MMBTU/Hr.	~~71.6~~ **320****	0.19**	
		29P	Coal Boiler No. 2 730 MMBTU/Hr.	~~233.3~~ **700****	0.22**	
Earlham College		31P	Oil Boiler 14 MMBTU/Hr.	0.70	0.080	
Purina Mills, Inc.	0033	32P	2 Oil Boilers One Stack 27 MMBTU/Hr.	1.0	0.015	
Wallace Metals	0011	33P	Oil Boiler 6.5 MMBTU/Hr.	0.10	0.015	
Design & Manufacturing		34P	1 Coal Boiler 43.5 MMBTU/Hr.	38.20	0.350	
Barrett Paving Materials	0029	24	Primary Crushing	17.40		
			Secondary Crushing	63.3		
			Screening/Conveying/Handling	292.4		
Wayne County Farm Bureau	0021	39	Shipping/Receiving, Transferring/Conveying, Screening/Cleaning, Drying	10.40		
Farmer's Grain	0017	47	Shipping, Receiving, Transferring, Conveying, Drying	732.0		
Belden Wire and Cable (plant)	0003	39	Plastic Compounding	8.0		
			Rubber Mixing	0.14		
			Pneumatic	10.80		

**The combined emissions from Coal Boiler No. 1 and Coal Boiler No. 2 shall not exceed 0.22 lbs/MMBTU.

(Air Pollution Control Board; 326 IAC 6-1-14; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2482; filed Jun 15, 1995, 1:00 p.m.: 18 IR 2727; errata filed Jul 6, 1995, 5:00 p.m.: 18 IR 2795; filed Sep 24, 1999, 9:57 a.m.: 23 IR 301; filed Nov 8, 2001, 2:02 p.m.: 25 IR 756; filed Mar 10, 2003, 8:30 a.m.: 26 IR 2318)

LSA Document #02-122(F)
Proposed Rule Published: October 1, 2002; 26 IR 97
Hearing Held: December 4, 2002
Approved by Attorney General: February 18, 2003
Approved by Governor: March 5, 2003
Filed with Secretary of State: March 10, 2003, 8:30 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #02-74(F)

DIGEST

Amends 470 IAC 3.1-12-2 to include fees received pursuant to the cost participation legislation (IC 12-17-15-17) as a funding source for assistance to children eligible for early intervention services. Adds 470 IAC 3.1-12-7 to adopt cost participation procedures. This rule originally established a comprehensive system of early intervention services for eligible infants and toddlers with disabilities and their families. Effective 30 days after filing with the secretary of state.

470 IAC 3.1-12-2
470 IAC 3.1-12-7

SECTION 1. 470 IAC 3.1-12-2 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3.1-12-2 Funding sources
Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17
Affected: IC 12-17-15

Sec. 2. (a) The individualized services specified in 470 IAC 3.1-4-2, provided to eligible infants and toddlers and their families, shall be financed through multiple funding sources. Sources which may be available to finance individualized services, as appropriate, may include, but are not limited to, the following:

(1) Title XIX of the Social Security Act (Medicaid).

(2) Third party payors, including private health insurers.

(3) Any medical program administered by the Secretary of the United States Department of Defense.

(4) Cost participation by the parent of an eligible child that receives early intervention services, pursuant to and in accordance with IC 12-17-15-17(b) through IC 12-17-15-17(e).

(b) All infants and toddlers and their families who are eligible for early intervention services through Medicaid and Children's Special Health Care Services must apply for Medicaid and Children's Special Health Care Services.

(c) Third party payors, such as health insurance companies, may be billed for the costs of appropriate early intervention services with informed, written parental consent through financial case management.

(d) Notwithstanding subsections **(a)(4),** (b), (c), and ~~section~~ **sections** 3 **and 7** of this rule, the provision of early intervention services may not be denied or delayed due to disputes between service providers or other agencies regarding financial responsibility to pay for early intervention services, **nor because of the inability of the parent of an eligible child to pay for services, under a cost participation plan.**

(e) Nothing in this article shall be construed as restricting any service provider from providing services to any person regardless of eligibility status; however, no service provider may utilize any early intervention system funding source for services provided to any ineligible child or family or file claims for reimbursement from the early intervention system for services rendered to such child or family. *(Division of Family and Children; 470 IAC 3.1-12-2; filed Jan 29, 1996, 5:15 p.m.: 19 IR 1345; filed Mar 9, 1999, 2:05 p.m.: 22 IR 2266; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; filed Feb 10, 2003, 3:22 p.m.: 26 IR 2320)*

SECTION 2. 470 IAC 3.1-12-7 IS ADDED TO READ AS FOLLOWS:

470 IAC 3.1-12-7 Cost participation plan
Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17
Affected: IC 12-17-15

Sec. 7. (a) As used in this section, family of an eligible infant or toddler shall be composed of members who live in the same household as the eligible infant or toddler and include only the following members:

(1) Biological parent.

(2) Adoptive parent.

(3) Sibling.

(4) Half-sibling.

(5) Adoptive sibling.

(b) The division shall establish and implement cost participation plan procedures for charges and fees imposed by service providers for the individualized services specified in:

(1) 470 IAC 3.1-4-2(a)(2) through 470 IAC 3.1-4-2(a)(4);

(2) 470 IAC 3.1-4-2(a)(6) through 470 IAC 3.1-4-2(a)(10);

(3) 470 IAC 3.1-4-2(a)(12) through 470 IAC 3.1-4-2(a)(14); and

(4) 470 IAC 3.1-4-2(a)(16).

(c) The cost participation plan procedures for each eligible family shall be based upon the following:

(1) The following schedule of costs, which expires on July 1, 2005:

Percentage of Federal Income Poverty Level		Copayment Per Treatment	Maximum Monthly Cost Share Per Family
At Least	But Not More Than		
0%	350%	$0	$0
351%	450%	$5	$25
451%	550%	$10	$50
551%	650%	$15	$75
651%	750%	$20	$100
751%	850%	$25	$125
851%	1000%	$30	$150
1001%		$36	$180

(2) The parent's ability to pay.

(d) The division may waive or reduce a required copayment if:

(1) out-of-pocket medical expenses and personal care needs expenses incurred, within the previous twelve (12) month period preceding the date of application that relate to the health or medical needs of a family member reduce the level of income the parent has to a lower level found in the schedule of costs at subsection (c)(1); or

(2) the division receives payment from a parent's health care coverage and does not exceed more than three thousand five hundred dollars ($3,500) per eligible child, per year.

(e) A parent who fails to provide the financial information for the division to be able to determine the copayment amount shall pay the maximum level copayment found in the schedule of costs at subsection (c)(1).

(f) The division may allow and accept voluntarily contributed payments that exceed the parent's required copayment amount.

(g) The parent's cost participation amount shall be reviewed by the division for one (1) or both of the following:

(1) Annually.

(2) Within thirty (30) days after the parent reports a reduction in income.

(h) The SPOE shall notify the parent of the following:

(1) The copayment amount per treatment and the maximum monthly cost share per family.

(2) Any recalculated copayment amount per treatment and the maximum monthly cost share per family determined under subsection (g)(1) or (g)(2).

(i) The parent may request reconsideration by the division of the copayment amount within fifteen (15) days from the date the notification of the copayment amount was received by the parent. The request for reconsideration shall:

(1) be written;

(2) be sent to the director of the division; and

(3) state the specific reasons the copayment amount should be reconsidered.

(j) The division shall establish and implement procedures to assure timely reimbursement of the copayment by parents for early intervention services required under this section.

(k) The copayments that are received by the division under this cost participation plan must be used to fund the early intervention system. *(Division of Family and Children; 470 IAC 3.1-12-7; filed Feb 10, 2003, 3:22 p.m.: 26 IR 2320)*

LSA Document #02-74(F)
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Approved by Governor: January 28, 2003
Filed with Secretary of State: February 10, 2003, 3:22 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #02-203(F)

DIGEST

Amends 470 IAC 11.1-1-5 to increase the maximum monthly income allowable for participation in the hospital care for the indigent program. Effective 30 days after filing with the secretary of state.

470 IAC 11.1-1-5

SECTION 1. 470 IAC 11.1-1-5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 11.1-1-5 Income determination

Authority: IC 12-13-2-3; IC 12-13-5-3; IC 12-16-3-3
Affected: IC 12-16-3-1

Sec. 5. (a) Income is all money received by the household members in the month of hospitalization subject to subsection (b).

(b) Income received on a quarterly, semiannual, or annual basis shall be divided by the appropriate number of months to establish monthly income.

(c) Countable income is gross monthly income less the following exclusions:

(1) Supplemental security income of the patient is excluded.

(2) Fifteen dollars and fifty cents ($15.50) is deducted from the income of the patient.

(3) Funds from a grant, scholarship, or fellowship, which are designated for tuition and mandatory books and fees at an educational institution or for vocational rehabilitation or technical training purposes, shall be deducted from the total of such funds.

(4) All of the earned income of a child under fourteen (14) years of age is excluded.

(5) Home energy assistance is excluded.

(6) The deductions allowed by the Internal Revenue Service are excluded from gross self-employment income.

(7) The deductions allowed by the Internal Revenue Service are excluded from gross rental income, with the following exceptions:

(A) Depreciation.

(B) Payments on the mortgage principal.

(C) Personal expenses of the owner.

(D) Insurance to pay off the mortgage in the event of death or disability.

(E) Capital expenditures.

(8) Tax refunds are excluded as income and shall be considered personal property under section 6 of this rule.
(9) Net earned income is determined by deducting sixty-five dollars ($65) plus one-half (½) of the remainder from gross earned income. Any part of the exclusion allowed in subdivision (2), which has not been deducted from unearned income, shall be deducted from gross earned income prior to the determination of net earned income.
(10) A loan shall not be considered as income in the month of receipt if the written or verbal loan agreement is legally binding under state law and includes the following:
(A) The borrower's acknowledgment of an obligation to repay.
(B) A timetable and plan for repayment.
(C) The borrower's expressed intent to repay either by pledging real or personal property or anticipated income.

(d) If the countable income, as determined in subsection (c), of the household members exceeds the monthly income standard as set forth in this subsection, the patient is ineligible for hospital care for the indigent.

Household Size	Maximum Monthly Income
1	~~$522~~ **$544**
2	~~$703~~ **$747**
3	~~$884~~ **$939**
4	~~$1,066~~ **$1,132**
Each additional household member	~~$182~~ **$193**

(e) The income standards specified in subsection (d) shall be adjusted on a biennial basis beginning in the year 2004, effective for hospitalizations that begin on and after October 1, 2004. Every two (2) years thereafter, the income standards shall be adjusted effective October 1. The standards shall be in an amount equal to seventy-five percent (75%) of the Federal Poverty Income Guidelines as published in the Federal Register. *(Division of Family and Children; 470 IAC 11.1-1-5; filed Jun 3, 1986, 3:00 p.m.: 9 IR 2714; filed Dec 4, 1989, 4:40 p.m.: 13 IR 629; errata filed Jun 20, 1990, 4:10 p.m.: 13 IR 2005; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2779; filed Oct 3, 1997, 4:50 p.m.: 21 IR 375; filed Feb 13, 2001, 3:07 p.m.: 24 IR 2090; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; filed Feb 10, 2003, 3:25 p.m.: 26 IR 2321)*

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TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #02-75(F)

DIGEST

Amends 515 IAC 1-4-1 and 515 IAC 1-4-2 to change the testing requirements for certain Indiana teaching licenses. Effective 30 days after filing with the secretary of state.

515 IAC 1-4-1
515 IAC 1-4-2

SECTION 1. 515 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

515 IAC 1-4-1 Test requirements and exemptions

Authority: IC 20-1-1.4-7; IC 20-6.1-3-10.1
Affected: IC 20-6.1-3-3

Sec. 1. (a) An applicant for an Indiana initial teaching license must do the following

~~(1)~~ consistent with 515 IAC 1-2-20: ~~one (1) of the following:~~
~~(A) From July 1, 1997, through August 31, 1999, for an applicant who has completed a teacher preparation program before September 1, 1999, and who is administered an examination before September 1, 1999, successfully complete a written examination that demonstrates proficiency in:~~
~~(i) communications skills;~~
~~(ii) general education;~~
~~(iii) professional education; and~~
~~(iv) knowledge of the areas in which the individual is required to have a license to teach.~~
~~(B) From September 1, 1999, for an applicant who has completed a teacher preparation program during calendar year 1999 and who is administered an examination described in IC 20-6.1-3-10.1 on or after September 1, 1999, successfully complete a written examination that demonstrates proficiency in:~~
~~(i) basic reading, writing, and mathematics through the Pre-professional Skills Test (PPST or Praxis I) of the Educational Testing Service;~~
~~(ii) pedagogy; and~~
~~(iii) knowledge of the areas in which the individual is required to have a license to teach.~~
~~(C)~~ **(1)** From September 1, 1999, for an applicant who has completed a teacher preparation program during calendar year 2000 or after and who is administered an examination described in IC 20-6.1-3-10.1 on or after September 1, 1999, successfully complete a written examination that demonstrates proficiency in:
~~(i)~~ **(A)** basic reading, writing, and mathematics through the Pre-professional Skills Test (PPST or Praxis I) of the Educational Testing Service;
~~(ii)~~ **(B)** pedagogy; and

~~(iii)~~ **(C)** knowledge of the areas in which the individual is required to have a license to teach.

(2) Fulfill the academic retention standard established by the institution recommending the applicant.

~~(b) An applicant who has not successfully completed the required examination under subsection (a)(1)(A) or (a)(1)(B) may qualify for a one (1) year, renewable limited license under 515 IAC 1-2-20.~~

~~(c)~~ **(b)** As an alternative to successfully completing the entire written examination listed under subsection (a), an applicant for an initial license may demonstrate proficiencies in the subject areas required by the examination in the following circumstances:

(1) An applicant may successfully complete an examination which is substantially equivalent to the examination required under subsection (a)(1). The board shall determine what constitutes substantial equivalency.

(2) An applicant who has a disability that would affect the applicant's performance on the examination, for which the applicant has taken the examination with reasonable accommodations, and for which the applicant has not successfully passed the entire examination, may not be required to have obtained a passing score in all subject areas required by the examination. To obtain a proficiency review under this subsection, an applicant should submit the following to the board and may submit additional material:

(A) A letter in which the applicant requests a review of the applicant's proficiencies in the pertinent subject areas.

(B) Credible documentation of the disability from an appropriate professional.

(C) Documentation which shows that the applicant has taken the examination with special accommodations.

(D) A written statement from an education professional who has worked with the applicant which attests to the competency of the applicant as a classroom teacher.

(E) A written statement from a college faculty member who has supervised the applicant's clinical experience which attests to the applicant's proficiency in classroom performance.

(F) A statement which outlines any special assistance or accommodations the candidate has had during college.

(G) The applicant's test history.

(H) A transcript copy which shows evidence of completion of a teacher preparation program, including student teaching and degree posted on the transcript.

(I) Any other relevant documentation required by the board.

An applicant with a disability that might affect test performance should notify the testing company of the disability when making application to take the test.

(Professional Standards Board; 515 IAC 1-4-1; filed Nov 26, 1985, 8:20 a.m.: 9 IR 717; filed Jun 11, 1986, 4:00 p.m.: 9 IR 2718; filed May 13, 1987, 9:30 a.m.: 10 IR 2289; filed Dec 15, 1989, 4:45 p.m.: 13 IR 885; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1004; filed Sep 16, 1998, 9:16 a.m.: 22 IR 445; filed Nov 20, 2000, 3:21 p.m.: 24 IR 995; filed Jun 1, 2001, 2:00 p.m.: 24 IR 3030; readopted filed Sep 25, 2001, 9:43 a.m.: 25 IR 529; filed Mar 4, 2003, 4:45 p.m.: 26 IR 2322) NOTE: Transferred from the Indiana State Board of Education (511 IAC 10-4-1) to the Professional Standards Board (515 IAC 1-4-1) by P.L.46-1992, SECTION 19, effective July 1, 1992.

SECTION 2. 515 IAC 1-4-2 IS AMENDED TO READ AS FOLLOWS:

515 IAC 1-4-2 Minimum acceptable scores

Authority: IC 20-1-1.4-7; IC 20-6.1-3-10.1
Affected: IC 4-22-7-7; IC 20-6.1-3-3

Sec. 2. ~~(a) The following are the minimum acceptable scores for successful completion of the examinations described in section 1(a)(1)(A) of this rule; the number in parentheses is the code number used by the Educational Testing Service for the test:~~

~~(1) Communications skills (10500)~~	~~653~~
~~(2) General knowledge (10510)~~	~~647~~
~~(3) Professional knowledge (10520)~~	~~646~~

~~(b)~~ **(a)** The following are the minimum acceptable scores for successful completion of the examinations described in section ~~1(a)(1)(B) or 1(a)(l)(C)~~ **1(a)(1)** of this rule; the number in parentheses is the code number used by the Educational Testing Service for the test:

(1) Mathematics: 320 on computer based test (0731), or 175 on written test (10730), **or 175 on computer based test (5730).**

(2) Reading: 323 on computer based test (0711), or 176 on written test (10710), **or 176 on computer based test (5710).**

(3) Writing: 318 on computer based test (0721), or 172 on written test (20720), **or 172 on computer based test (5270).**

~~(c)~~ **(b)** The following are the minimum acceptable scores for successful completion of the various specialty area tests; the number in parentheses is the code number or the last four (4) digits of a code number used by the Educational Testing Service for the test; if two (2) or more tests on the same subject are or may be offered at the same time, the word "replaces" follows the code number of the required test, and precedes the code number of the test that is no longer accepted, and the effective date of the required test:

National Teachers Examination Specialty Area Tests
or
Praxis II from the Educational Testing Service

Art: Content Knowledge (0133 replaces 10130 after August 1, 2001)	149
Art Education (10130)	510
Biology: Content Knowledge (0235) (Middle and High School) (0235 replaces 10230 after August 1, 2001)	154
Biology and General Science (20030) (Middle School)	560

Biology (10230) (High School)	510
Business Education (10100)	480
Chemistry: Content Knowledge (0245) (0245 replaces 20240 after August 1, 2001)	151
Chemistry (20240)	460
Early Childhood Education (K–3) (10020)	510
Earth Science: Content Knowledge (0571 replaces 20570 after August 1, 2001)	150
Earth/Space Science (20570)	420
Elementary Education: Curriculum, Instruction and Assessment (10011) **(Effective September 1, 2003)**	~~143~~ **165**
Education of Students with Mental Retardation (10320)	560
English Language, Literature, and Composition: Content Knowledge (10041) (Middle and High School)	153
French (10170) (Middle and High School)	520
French: Content Knowledge (0173)	160
French: Productive Language Skills (0171) (0173 and 0171 replace 10170 after August 1, 2001)	162
General Science (10430)	
For General Science License	450
For Physical Science License	360
German (20180) (Middle and High School)	490
Health Education (20550)	420
Home Economics Education (10120)	540
Introduction to the Teaching of Reading (10200)	510
Mathematics (10060) (Middle and High School)	530
Mathematics: Content Knowledge (0061) (0061 replaces 10060 after August 1, 2001)	136
Media Specialist (10310) (Library Media Specialist)	530
Music: Content Knowledge (0113 replaces 10110 after August 1, 2001)	140
Music Education (10110)	510
Physical Education (10090)	540
Physical Education: Content Knowledge (0091) (0091 replaces 10090 after August 1, 2001)	150
Physical Science (10430)	360
Physics: Content Knowledge (0265) (0265 replaces 30260 after August 1, 2001)	149
Physics (30260)	400
Prekindergarten Education (20530) (For pre-K/early childhood license)	390
Reading Specialist (0300) (For elementary teaching after July 1, 2001)	370
School Leaders Licensure Assessment (1010)	**165**
Social Studies: Content Knowledge (10081) (Middle and High School)	147
Spanish (10190) (Middle and High School)	500
Spanish: Content Knowledge (0191)	159
Spanish: Productive Language Skills (0192) (0191 and 0192 replace 10190 after August 1, 2001)	162
Special Education: Knowledge-Based Core Principles (0351)	136
Special Education Core Principles: Content Knowledge (0353)	150
Special Education: Teaching Students with Behavioral Disorders/Emotional Disturbance (0371) (0371 replaces 10370 after August 1, 2001)	139
Special Education: Teaching Students with Learning Disabilities (0381) (0381 replaces 10380 after August 1, 2001)	139
Special Education: Teaching Students with Mental Retardation (0321) (0321 replaces 10320 after August 1, 2001)	144
Speech Communication (10220)	490
Teaching Students with Emotional Disturbances (10370)	540
Teaching Students with Learning Disabilities (10380)	430
Technology Education (10050) (Industrial Arts)	590

~~(d)~~ **(c)** An applicant for a teaching license in a health occupations specialty area must take the registry or certification examination required by the respective professional association and achieve at least the minimal score accepted by that professional association.

~~(e) An applicant for a teaching license in a vocational specialty area must take the National Occupational Competency Trade and Industry Test (NOCTI) in the appropriate specialty area and achieve a minimum T-score of forty (40).~~

~~(f)~~ **(d)** An applicant may repeat any section of an examination on which the applicant does not achieve the minimum score.

~~(g)~~ **(e)** If, during the time an applicant for an initial teaching license is enrolled in a teacher preparation program, the applicant achieved the minimum acceptable score required for an examination or test in subsection ~~(c), (d),~~ **(b)** or ~~(e),~~ **(c),** the applicant may use that score even if a different score or a different examination or test is required at the time of application for the license. However, an applicant must achieve the minimum acceptable score for any examination or test that has been added as a requirement for an initial teaching license after the applicant completed the preparation program.

~~(h)~~ **(f)** In lieu of amending this rule, the professional standards board may publish a "Notice of Test Code Change" policy statement pursuant to IC 4-22-7-7 in the event that the Educational Testing Service changes the name of or a code for a test but does not change either the content of the test or the scoring scale for the test. Upon publication, the professional standards board must simultaneously distribute the notice to the

unit head and licensing advisor of each institution preparing educators.

~~(i)~~ **(g)** In addition to 515 IAC 1-2-20 regarding limited licenses, a person who is otherwise eligible for an initial standard license in ~~elementary~~ ~~teaching~~ **a content area** and who has attempted the ~~Reading~~ ~~Specialist~~ ~~(0300)~~ **required assessment** examination as required under subsection ~~(c)~~ ~~for elementary teaching,~~ **(b),** but who has not achieved the minimum acceptable score, is eligible for a **one (1) year,** nonrenewable limited license. ~~for the 2001-2002 academic year.~~

(h) From February 1, 2003, until December 31, 2004, a candidate for an administrator's license must achieve a minimum score of 158 on the assessment.

(i) Candidates for the original administration and supervision license after January 1, 2003, must successfully complete the assessment unless they hold a currently valid standard, provisional, or professional administration and supervision license in Indiana or the equivalent license in another state and can verify three (3) years of full-time experience in an accredited K-12 school in the appropriate position under that license. *(Professional Standards Board; 515 IAC 1-4-2; filed Nov 26, 1985, 8:20 a.m.: 9 IR 717; filed May 13, 1987, 9:30 a.m.: 10 IR 2289; errata filed Jul 17, 1988, 11:00 a.m.: 10 IR 2741; filed Sep 27, 1988, 10:10 a.m.: 12 IR 299; filed Dec 15, 1989, 4:45 p.m.: 13 IR 886; filed Mar 1, 1991, 10:35 a.m.: 14 IR 1436; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1004; filed Apr 26, 1994, 5:00 p.m.: 17 IR 2066; errata filed Jun 7, 1994, 4:00 p.m.: 17 IR 2359; filed May 10, 1999, 12:36 p.m.: 22 IR 2867; filed Nov 20, 2000, 3:21 p.m.: 24 IR 996; filed Jun 1, 2001, 2:00 p.m.: 24 IR 3031; readopted filed Sep 25, 2001, 9:43 a.m.: 25 IR 529; filed Mar 4, 2003, 4:45 p.m.: 26 IR 2323) NOTE: Transferred from the Indiana State Board of Education (511 IAC 10-4-2) to the Professional Standards Board (515 IAC 1-4-2) by P.L.46-1992, SECTION 19, effective July 1, 1992.*

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TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #02-80(F)

DIGEST

Adds 515 IAC 5 to establish the process whereby a person obtains a substitute teacher's permit and the process whereby a school district employs a substitute teacher. Effective 30 days after filing with the secretary of state.

515 IAC 5

SECTION 1. 515 IAC 5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 5. SUBSTITUTE TEACHER'S PERMIT

Rule 1. Substitute Permits

515 IAC 5-1-1 Permits
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1-6.5; IC 20-6.1-1-8; IC 20-6.1-3; IC 20-6.1-4

Sec. 1. A substitute permit is a renewable three (3) year license issued to a teacher upon application from the Indiana school district superintendent as defined by the Indiana school district substitute plan provided for in section 3 of this rule. *(Professional Standards Board; 515 IAC 5-1-1; filed Mar 4, 2003, 4:44 p.m.: 26 IR 2325)*

515 IAC 5-1-2 Application
Authority: IC 20-1-1.4-7
Affected: IC 20-1-16.6; IC 20-6.1-1-8; IC 20-6.1-3; IC 20-6.1-4

Sec. 2. (a) An application for a substitute permit must contain the following:

(1) A completed application form approved by the professional standards board (board), including the signature of the superintendent or designee.

(2) A limited criminal history check from the Indiana state police, dated no earlier than one (1) year prior to the date the application is received by the board.

(3) A nonrefundable fee in the form of a cashier's check, certified check, or money order in the amount required under 515 IAC 1-2-19, or by electronic payment if the board accepts fees electronically.

(b) An incomplete application may be returned. A new fee may be required as a result of submitting an incomplete application. The applicant and the school district are responsible for any delays in licensing processing caused by the submission of an incomplete application. *(Professional Standards Board; 515 IAC 5-1-2; filed Mar 4, 2003, 4:44 p.m.: 26 IR 2325)*

515 IAC 5-1-3 Substitute plan
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1-6.5; IC 20-6.1-8; IC 20-6.1-3; IC 20-6.1-4

Sec. 3. (a) A school district substitute plan must contain the following:

(1) A school district's requirements for a substitute permit.

(2) The minimum of a high school diploma earned from an accredited school.

(3) A plan for reciprocity with other Indiana school districts providing for their utilization of substitute teachers who were licensed by the school district submitting the plan, if applicable.
(4) Training and mentoring procedures for first-year substitute teachers.
(5) Any additional documentation, as may be required by the professional standards board (board).

(b) A school district must have a current substitute plan on file with the Indiana professional standards board by June 1, 2003. The school district must submit any changes to the plan thirty (30) days prior to implementation of those changes. *(Professional Standards Board; 515 IAC 5-1-3; filed Mar 4, 2003, 4:44 p.m.: 26 IR 2325)*

515 IAC 5-1-4 Substitute teacher
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1-6.5; IC 20-6.1-1-8; IC 20-6.1-3; IC 20-6.1-4; IC 20-6.1-5-4

Sec. 4. (a) A school district shall not employ persons holding a substitute permit when licensed teachers are available.

(b) Any person who holds a valid Indiana professional, provisional, standard, initial practitioner, proficient practitioner, accomplished practitioner, reciprocal, limited, or emergency permit may serve as a substitute teacher. The board recognizes the obligation of a school corporation to comply with the requirements of IC 20-6.1-5-4 with respect *[sic., to]* **the compensation paid to a teacher serving as a substitute teacher and holding a professional, provisional, limited, or equivalent teaching license.**

(c) A person may not serve as a substitute teacher without a valid permit issued under the authority of the professional standards board unless he or she meets the criteria of subsection (b).

(d) Substitute teaching experience shall not count as regular teaching experience to be used toward converting a standard Indiana teaching license to a professional license or an initial practitioner license to a professional practitioner license, waiving the proficiency test, or waiving the beginning teacher internship or assessment program.

(e) A substitute permit may be renewed upon application for three (3) years.

(f) If a school district fails to submit a substitute plan, substitute teachers for that district will be subject to the requirements of 515 IAC 1-2-17.

(g) The substitute permit is valid only for the requesting school district, unless the school district has a reciprocity plan with another district as described in section 3 of this rule. *(Professional Standards Board; 515 IAC 5-1-4; filed Mar 4, 2003, 4:44 p.m.: 26 IR 2326)*

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TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #02-124(F)

DIGEST

Amends 760 IAC 1-59 to set filing and implementation requirements for internal grievance procedures. Effective 30 days after filing with the secretary of state.

760 IAC 1-59-1	**760 IAC 1-59-8**
760 IAC 1-59-2	**760 IAC 1-59-9**
760 IAC 1-59-3	**760 IAC 1-59-10**
760 IAC 1-59-4	**760 IAC 1-59-11**
760 IAC 1-59-5	**760 IAC 1-59-12**
760 IAC 1-59-6	**760 IAC 1-59-13**
760 IAC 1-59-7	**760 IAC 1-59-14**

SECTION 1. 760 IAC 1-59-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-1 Authority
Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28; IC 27-13-10

Sec. 1. This rule is adopted and promulgated pursuant to the authority granted by **IC 27-8-28-20,** IC 27-13-10-13, and IC 27-13-35-1. *(Department of Insurance; 760 IAC 1-59-1; filed Sep 30, 1998, 2:17 p.m.: 22 IR 446, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2326)*

SECTION 2. 760 IAC 1-59-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-2 Purpose
Authority: IC 27-8-28-20; IC 27-13-10-13
Affected: IC 27-8-28-19; IC 27-13-8-2; IC 27-13-10

Sec. 2. The purpose of this rule is to prescribe the following for **insurers and** health maintenance organizations:
(1) The form for filing information with the commissioner, as required by **IC 27-8-28-19 and** IC 27-13-8-2(a).
(2) Requirements for notifying enrollees of grievance procedures.

(3) Requirements for filing, investigating, and resolving grievances and appeals.

(Department of Insurance; 760 IAC 1-59-2; filed Sep 30, 1998, 2:17 p.m.: 22 IR 446, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2326)

SECTION 3. 760 IAC 1-59-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-3 Definitions

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28-3; IC 27-13-1-12; IC 27-13-1-32; IC 27-13-10-7

Sec. 3. The definitions in **IC 27-8-28 and** IC 27-13 shall apply for purposes of this rule, in addition to the following:

~~(1) "Commissioner" means the commissioner of the department of insurance.~~

~~(2) "Department" means the department of insurance.~~

~~(3)~~ **(1)** "Enrollee", as defined in IC 27-13-1-12, includes "subscriber" as defined in IC 27-13-1-32 **and "covered individual" as defined in IC 27-8-28-3.**

~~(4)~~ **(2)** "Grievance" means **the following:**

(A) For a health maintenance organization and a limited service health maintenance organization, any dissatisfaction expressed by or on behalf of an enrollee of a health maintenance organization or a limited service health maintenance organization regarding the:

~~(A)~~ **(i)** availability, delivery, appropriateness, or quality of health care services;

~~(B)~~ **(ii)** handling or payment of claims for health care services; or

~~(C)~~ **(iii)** matters pertaining to the contractual relationship between:

~~(i)~~ **(AA)** an enrollee and a health maintenance organization or a limited service health maintenance organization; or

~~(ii)~~ **(BB)** a group or individual contract holder and a health maintenance organization or a limited service health maintenance organization;

and for which the enrollee has a reasonable expectation that action will be taken to resolve or reconsider the matter that is the subject of dissatisfaction.

(B) For an insurer, any dissatisfaction expressed by or on behalf of a covered individual regarding:

(i) a determination that a service or a proposed service is not appropriate or medically necessary;

(ii) a determination that a service or a proposed service is experimental or investigational;

(iii) the availability of participating providers;

(iv) the handling or payment of claims for health care services; or

(v) matters pertaining to the contractual relationship between a:

(AA) covered individual and an insurer; or

(BB) group policyholder and an insurer;

and for which the covered individual has a reasonable expectation that action will be taken to resolve or reconsider the matter that is the subject of the dissatisfaction.

~~(5)~~ **(3)** "Grievance procedures" means written procedures established and maintained by a health maintenance organization, ~~or~~ a limited service health maintenance organization, **or an insurer** for filing, investigating, and resolving grievances and appeals.

~~(6)~~ **(4)** "Major population group" means a racial or ethnic group for whom English is not the primary language and whose members comprise at least ten percent (10%) of the health maintenance organization's enrollees.

(Department of Insurance; 760 IAC 1-59-3; filed Sep 30, 1998, 2:17 p.m.: 22 IR 447, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2327)

SECTION 4. 760 IAC 1-59-4 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-4 Reports

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28-19; IC 27-13-8-2

Sec. 4. ~~(a)~~ On or before March 1 of each year, **an insurer,** a health maintenance organization, **and a limited service health maintenance organization** must submit **electronically** to the department a grievance procedure report for the preceding calendar year on the form set forth in section 14 of this rule. A health maintenance organization **and a limited service health maintenance organization** may submit the information required by IC 27-13-8-2(a)(2) and IC 27-13-8-2(a)(3) concurrent with this filing.

~~(b) The report must be prepared in tabular form on paper measuring eight and one-half (8½) inches by eleven (11) inches.~~

~~(c) The report also must be submitted on a disk formatted for Microsoft Excel and the disk must accompany the paper copy.~~

(Department of Insurance; 760 IAC 1-59-4; filed Sep 30, 1998, 2:17 p.m.: 22 IR 447, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2327)

SECTION 5. 760 IAC 1-59-5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-5 Grievance register

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28; IC 27-13-10-3

Sec. 5. (a) **An insurer,** a health maintenance organization, and a limited service health maintenance organization shall maintain written records that document certain information about all grievances received during a calendar year (the grievance register).

(b) The grievance register shall contain, at a minimum, the following information for each grievance:

(1) A general description of the basis for the grievance using the categories in block 3 of the grievance procedures report set forth in section 14 of this rule.
(2) Date received.
(3) Date investigated or reviewed.
(4) Date resolved.
(5) Description of resolution.
(6) Date appeal, if any, was received.
(7) Date of appeals hearing or review.
(8) Date appeal was resolved.
(9) Description of resolution of the appeal.
(10) Name of enrollee and enrollee's representative, if any, who filed, or upon whose behalf was filed, the grievance.
(11) Names and titles of all persons who investigated, reviewed, and resolved the grievance.

(c) **An insurer,** a health maintenance organization, or **a** limited service health maintenance organization shall retain each grievance register until the commissioner has conducted an examination of the organization and adopted a final report of the examination that contains a review of the register for the calendar year covered by the grievance register. *(Department of Insurance; 760 IAC 1-59-5; filed Sep 30, 1998, 2:17 p.m.: 22 IR 447, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2327)*

SECTION 6. 760 IAC 1-59-6 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-6 Establishment of grievance procedures; filing with and review by commissioner

Authority: **IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1**
Affected: **IC 27-8-28-17; IC 27-13-2; IC 27-13-10; IC 27-13-34-8; IC 27-13-39-3**

Sec. 6. (a) **An insurer,** a health maintenance organization, and a limited service health maintenance organization shall establish and maintain grievance procedures.

(b) A copy of the grievance procedures, including all forms used in filing and reviewing grievances, shall be included with any application for a certificate of authority submitted to the department.

(c) Any material modifications to the grievance procedures subsequent to the submission of the application shall be filed with the commissioner not more than fifteen (15) days after the adoption of the modification.

(d) The grievance procedures shall require the following:
(1) **A health maintenance organization must provide written or oral acknowledgment of a grievance or appeal no more than three (3) business days after receipt. Insurers must provide** written or oral acknowledgment of a grievance or appeal **no more than five (5) business days after receipt.** The acknowledgment must include the name, address, and telephone number of an individual to contact regarding the grievance and the date the grievance was filed.
(2) Investigation of any grievance or appeal in accordance with written procedures and the requirements of section 10 of this rule.
(3) Documentation of the substance of the grievance and all actions taken by the **insurer or** health maintenance organization regarding the grievance or appeal, including notification, acknowledgment, investigation, and resolution.
(4) Written notification to the enrollee of:
(A) resolution of the grievance or appeal;
(B) the right to appeal the resolution;
(C) information about how, when, and where to appeal the resolution; and
(D) the right to further remedies allowed by law, in the case of an appeal of a grievance resolution.

(e) The grievance procedures shall include procedures to assist enrollees and representatives of enrollees in filing grievances and appeals, including provisions for assistance to persons with literacy, language, physical, health, or other impediments.

(f) The grievance procedures shall include standards that meet the requirements of **IC 27-8-28-17 or** IC 27-13-10 and section 10 of this rule for timeliness in acknowledging, investigating, and resolving grievances and appeals and that accommodate the clinical urgency of the enrollee's situation. The standards for timeliness shall address:
(1) the likelihood of death, permanent injury, improvement, or deterioration of health status; and
(2) the ability to reach and maintain maximum function.

(g) The grievance procedures must require expedited review of a grievance or appeal if the time periods set forth in section 10 of this rule would seriously jeopardize the life or health of an enrollee or the enrollee's ability to reach and maintain maximum function.

(h) ~~The~~ **An HMO's** grievance procedures must comply with the requirements of IC 27-13-39-3 with respect to any grievance regarding denial of coverage for a treatment, procedure, drug, or device on the grounds that it is experimental.

(i) The grievance procedures shall require and describe the process for the appointment of at least one (1) individual who has sufficient experience, knowledge, and training to appropriately resolve a grievance or appeal.

(j) The requirements of subsections (d) through (i) do not apply to a limited service health maintenance organization. *(Department of Insurance; 760 IAC 1-59-6; filed Sep 30, 1998, 2:17 p.m.: 22 IR 447, eff Jan 1, 1999; errata, 22 IR 759; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2328)*

SECTION 7. 760 IAC 1-59-7 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-7 Notice to enrollees

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28; IC 27-13-7-5; IC 27-13-9-4; IC 27-13-10; IC 27-13-39

Sec. 7. (a) **An insurer and** a health maintenance organization shall provide the following to each enrollee:

(1) Information about health care services ~~offered~~ **covered** by the **insurer or** health maintenance organization, including the following:

(A) A description of ~~in-plan and out-of-plan~~ covered services, **including any services subject to a network restriction.**

(B) A description of any limitations on payment for or coverage of health care services, including definitions of commonly used terms.

(C) Criteria used to determine whether to deny coverage.

(D) A description of exclusions from coverage.

(E) An explanation of any limitation on coverage for experimental treatments, procedures, drugs, or devices, including the following:

(i) A description of the process used to determine any limitation.

(ii) A description of the criteria the **insurer or the** health maintenance organization uses to determine whether a treatment, procedure, drug, or device is experimental.

(2) Information about where additional information on access to services can be obtained.

(3) Information about the **insurer's or the** health maintenance organization's grievance procedures, including the toll free telephone number described in section 8 of this rule.

(4) Information about the **insurer's or the** health maintenance organization's structure.

(5) Information about costs for which the enrollee is responsible.

(6) Information about financial incentives and disincentives given by the **insurer or the** health maintenance organization to providers.

(b) Except as provided in subsection (f), the information required by subsection (a) must be:

(1) included in or provided with the evidence of coverage required under IC 27-13-7-5 or any member handbook within the time periods set forth in subsection (f); and

(2) provided to any potential enrollee upon request.

(c) The information required by subsection (a)(3) shall be included on any notice to enrollees regarding the provision, limitation, or denial of health care services.

(d) The toll free telephone number shall be prominently displayed on any enrollment verification card.

(e) **This subsection is applicable to health maintenance organizations only.** A brief statement of an enrollee's right to file a grievance with the health maintenance organization, including the toll free telephone number, shall be posted by a participating provider in a conspicuous public location in each place where health care services are provided by or on behalf of the health maintenance organization. The notice shall be in bold face type at least one-half (½) inch in height. The statement must contain the following or substantially similar language: "We participate in the following health maintenance organizations: [list names of and toll free telephone numbers of participating HMOs]. If you have coverage through one (1) of these HMOs and have a complaint or grievance, you may call the HMO at its toll free number listed above. The HMO is required by law to try to resolve your complaint or grievance. You may also register a complaint with the Indiana Department of Insurance at 1-800-622-4461. The HMO cannot retaliate against you or your provider for making a complaint.".

(f) The information required by subsection (a) must be provided to enrollees not later than one hundred twenty (120) days after the effective date of this rule. During the period beginning one hundred twenty (120) days after the effective date of this rule and ending on the first renewal date of the enrollee's plan that occurs on or after the effective date of this rule, the information required by subsection (a) may be provided to enrollees in an addendum to or statement separate from the documents described in subsections (b) and (d). *(Department of Insurance; 760 IAC 1-59-7; filed Sep 30, 1998, 2:17 p.m.: 22 IR 448, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2329)*

SECTION 8. 760 IAC 1-59-8 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-8 Toll free telephone number

Authority: IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-13-9-4; IC 27-13-10-5

Sec. 8. (a) **An insurer and** a health maintenance organization shall establish a toll free telephone number through which grievances and appeals may be filed and information about grievance procedures obtained.

(b) An individual who is knowledgeable about the **insurer's or the** health maintenance organization's grievance procedures and any applicable state laws and regulations must be available to respond to calls received at the toll free telephone number at least forty (40) normal business hours per week. The toll free telephone number must be answered by an answering machine or similar device at all other times.

(c) Any messages left through the toll free telephone number must be returned on the following business day by a qualified individual.

(d) The toll free telephone number must accept grievances in English and the languages of the major population groups served by the health maintenance organization. *(Department of Insurance; 760 IAC 1-59-8; filed Sep 30, 1998, 2:17 p.m.: 22*

IR 449, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2329)

SECTION 9. 760 IAC 1-59-9 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-9 Filing grievances
Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28; IC 27-13-10

Sec. 9. (a) A grievance may be filed with **an insurer or** a health maintenance organization orally, including by telephone, or in writing, including by facsimile or electronic means of communication.

(b) A grievance may be filed with a limited service health maintenance organization, in writing, including by facsimile or electronic means of communication.

(c) A grievance is considered to be filed on the day and time it is first received orally or in writing by the **insurer,** health maintenance organization, or limited service health maintenance organization.

(d) A grievance may be filed by an enrollee, or a representative of an enrollee, including a health care provider acting on behalf of an enrollee. *(Department of Insurance; 760 IAC 1-59-9; filed Sep 30, 1998, 2:17 p.m.: 22 IR 449, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2330)*

SECTION 10. 760 IAC 1-59-10 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-10 Standards for timely review and resolution of grievances
Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28; IC 27-13-10-7; IC 27-13-10-8

Sec. 10. (a) Minimum standards for timely review and resolution of grievances filed with **an insurer or** a health maintenance organization are as follows:

(1) **A health maintenance organization shall provide** oral or written acknowledgment of a filed grievance ~~must be provided~~ to an enrollee not more than three (3) business days after the grievance is filed. **An insurer shall provide oral or written acknowledgment of a filed grievance to an enrollee or an enrollee's representative not more than five (5) business days after the grievance is filed.**

(2) ~~Resolution of~~ **A health maintenance organization shall resolve** a grievance not more than twenty (20) business days after the grievance is filed. **An insurer shall resolve a grievance not more than twenty (20) business days after the insurer receives all information reasonably necessary to complete the review.**

(3) Written notification to an enrollee of the resolution of a grievance not more than five (5) business days after the resolution.

(4) The time period set forth in subdivision (2) may be extended if **an insurer or** a health maintenance organization is unable to resolve a grievance within the specified time period due to circumstances beyond the **insurer's or the** health maintenance organization's control. An enrollee must be notified in writing of the reason for the delay not more than nineteen (19) business days after the grievance is filed. The **insurer or the** health maintenance organization shall issue a written notification of the resolution of the grievance not more than ten (10) business days after the notification to the enrollee of the delay.

(b) As used in this rule, "circumstances beyond the **insurer's or the** health maintenance organization's control" means the following:

(1) The failure of a provider that is not a participating provider to provide within fifteen (15) days of the filing of the grievance information that is requested by the **insurer or the** health maintenance organization and is necessary to adequately review and investigate the grievance.

(2) The failure of an enrollee to provide additional information requested by **the insurer or** the health maintenance organization that is necessary to resolve the grievance within fifteen (15) days of the filing of the grievance.

(c) Minimum standards for timely review and resolution of grievance resolution appeals filed with **an insurer or** a health maintenance organization are as follows:

(1) Oral or written acknowledgment **by a health maintenance organization** to an enrollee of a filed appeal not more than three (3) business days after the appeal is filed. **Oral or written acknowledgment by an insurer to a covered individual of a filed appeal not more than five (5) business days after the appeal is filed.**

(2) Resolution of the appeal not more than forty-five (45) business days after the appeal is filed.

(3) Written notification to an enrollee of the resolution of an appeal not more than five (5) business days after the resolution.

(Department of Insurance; 760 IAC 1-59-10; filed Sep 30, 1998, 2:17 p.m.: 22 IR 449, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2330)

SECTION 11. 760 IAC 1-59-11 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-11 Grievance resolution notice
Authority: IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-13-10-7

Sec. 11. The written notification of resolution required by section 10(a) and 10(c) of this rule shall contain the following:

(1) A statement of the **insurer's or the** health maintenance organization's understanding of the enrollee's grievance.

(2) A description of the resolution reached by the **insurer or the** health maintenance organization stated in clear terms and the contract basis or medical rationale for the resolution

stated in sufficient detail for the enrollee to respond further to the **insurer's or the** health maintenance organization's position.

(3) A reference to the evidence or documentation used as the basis for the resolution.

(4) A statement of the procedures governing an appeal, including how to file an appeal.

(5) In the case of a resolution of an appeal of a grievance resolution, a notice of the enrollee's right to further remedies allowed by law.

(6) The department, address, and telephone number through which an enrollee may contact a qualified representative to obtain more information about the resolution of the grievance or the right to and procedures governing an appeal or further remedies allowed by law.

(Department of Insurance; 760 IAC 1-59-11; filed Sep 30, 1998, 2:17 p.m.: 22 IR 450, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2330)

SECTION 12. 760 IAC 1-59-12 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-12 Appeal of a grievance resolution

Authority: IC 27-8-28; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28; IC 27-8-17; IC 27-13-10-8

Sec. 12. (a) The health maintenance organization shall appoint a panel of individuals who have sufficient experience, knowledge, and training to appropriately resolve an appeal. If the grievance involves the proposal, refusal, or delivery of a health care procedure, treatment, or service, the panel must include at least one (1) individual who:

(1) has knowledge in the medical condition, procedure, or treatment at issue;

(2) is in the same licensed profession as the health care provider who proposed, refused, or delivered the health care procedure, treatment, or service that is the basis of the underlying grievance; and

(3) is not involved, **in any manner,** in the matter that is the basis of the underlying grievance **or have**

~~(b) The following individuals may not be appointed to a panel:~~

~~(1) Any individual who was involved in the matter that is the basis of the underlying grievance.~~

~~(2) Any individual who was involved in the investigation or resolution of the underlying grievance.~~

~~(3) Any individual who has~~ a direct business relationship with the enrollee or the health care provider who proposed, refused, or delivered the health care procedure, treatment, or service that is the basis of the underlying grievance.

~~(c) A health maintenance organization shall not be required to appoint a panel to resolve an appeal pursuant to IC 27-13-10-8 if the appeal involves substantially the same issue or issues previously reviewed in an appeal conducted pursuant to IC 27-8-17.~~

(b) In the case of an appeal of a grievance described in section 3(2)(B)(i) or 3(2)(B)(ii) of this rule, an insurer shall appoint a panel of one (1) or more qualified individuals to resolve an appeal. The panel shall include one (1) or more individuals who:

(1) have knowledge of the medical condition, procedure, or treatment at issue;

(2) are licensed in the same profession and have a similar specialty as the provider who proposed or delivered the health care procedure, treatment, or service;

(3) are not involved in the matter giving rise to the appeal or in the initial investigation of the grievance; and

(4) do not have a direct business relationship with the covered individual or the health care provider who previously recommended the health care procedure, treatment, or service giving rise to the grievance.

~~(d)~~ **(c) An insurer and** a health maintenance organization shall require the panel to meet at a time during normal business hours and place convenient to an enrollee who wishes to appear before or otherwise communicate with the panel, to the extent reasonably possible. **An insurer and** a health maintenance organization shall notify an enrollee whose grievance is the subject of an appeal not less than seventy-two (72) hours prior to the meeting of the panel. ~~pursuant to IC 27-13-10-8.~~ The enrollee may waive the seventy-two (72) hour notice of the meeting of the panel. *(Department of Insurance; 760 IAC 1-59-12; filed Sep 30, 1998, 2:17 p.m.: 22 IR 450, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2331)*

SECTION 13. 760 IAC 1-59-14 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-14 Grievance procedures report form

Authority: IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-13-8-2

Sec. 14. The form required by section 4(a) of this rule is the following:

~~HMO~~ GRIEVANCE PROCEDURES REPORT

NAME: _____

FOR REPORTING PERIOD January 1, ____ through December 31, ____

Block 1 REPORTING ~~HMO~~ **COMPANY** INFORMATION

NAIC Group Code:	
Assumed business name(s):	

Address:	
General business telephone number:	
Grievance reporting - toll free number:	
Name, ~~and~~ telephone number, **and e-mail address** of contact person for grievance procedures:	
Languages in which grievances may be filed:	
Total number of Indiana enrollees at beginning of reporting period:	
Total number of Indiana enrollees at end of reporting period:	
Service area (use applicable county codes; **if the entire state, please indicate entire state rather than list all county codes):**	

Block 2 GENERAL INFORMATION

Number of grievances filed		Number of appeals filed	
Number of grievances resolved		Number of appeals resolved	
Number of grievances resolved with ~~HMO~~ **Company** position upheld		Number of appeals resolved with ~~HMO~~ position upheld	
Number of grievances resolved with ~~HMO~~ **Company** position overturned		Number of appeals resolved with ~~HMO~~ **Company** position overturned	
Number of grievances pending		Number of appeals pending	
Time to resolve grievances (average number of days)		Time to resolve appeals (average number of days)	

INTERNAL GRIEVANCE AND APPEALS INFORMATION

Block 3 NOTE: A grievance should not be recorded in more than one (1) category.

Basis	Number Filed	Company Position Upheld? Yes (#): No (#):	Number Pending	Average Number Of Days To Resolve	Appealed? Yes (#): No (#):	Company Position Upheld On Appeal? Yes (#): No (#):	Number Of Appeals Pending	Average Number Of Days To Resolve Appeals
DENIAL OR LIMITATION OF COVERED HEALTH CARE SERVICES								
Inpatient services								
Outpatient services								
Emergency services								
Mental or behavioral services								
Home health care								
Prescription drugs								
Equipment or supplies								
Laboratory services								
Experimental treatments								
Other services								
HEALTH CARE PROVIDERS **(for HMOs, LSHMOs, and Insurers with Network plans)**								
Quality of health care services								
No referral or expired referral								
Problem with particular provider not available								
Problem with number of providers available								
Problem with type of providers available								
Problem with provider location								
Problem getting appointment								

OTHER BASIS FOR GRIEVANCE								
Difficulty in enrolling/ other enrollment issues								
Problem with claim payment or handling								
Benefits limited or excluded								
Timeliness of decision making								
Other (attach additional sheets if necessary)								

Block 4 DESCRIPTION OF GRIEVANCE PROCEDURES

Please describe your grievance procedures. Attach additional sheets as necessary:

Block 5 DESCRIPTION OF APPEALS PROCEDURES

Please describe your appeals procedures. Attach additional sheets as necessary:

(Department of Insurance; 760 IAC 1-59-14; filed Sep 30, 1998, 2:17 p.m.: 22 IR 451, eff Jan 1, 1999; filed Feb 17, 2003, 9:57 a.m.: 26 IR 2331)

SECTION 14. 760 IAC 1-59-13 IS REPEALED.

LSA Document #02-124(F)
Notice of Intent Published: 25 IR 2546
Proposed Rule Published: October 1, 2002; 26 IR 170
Hearing Held: October 22, 2002
Approved by Attorney General: February 5, 2003
Approved by Governor: February 14, 2003
Filed with Secretary of State: February 17, 2003, 9:57 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

LSA Document #02-91(F)

DIGEST

Amends 836 IAC 1, 836 IAC 2, 836 IAC 3, and 836 IAC 4 to revise, clarify, and correct the certification and training requirements and the definitions applicable to emergency medical service personnel, providers, and air ambulances (rotocraft and fixed wing) and vehicles (transport and nontransport). Also adds 836 IAC 1-1-2, 836 IAC 1-1-3, 836 IAC 1-3-6, 836 IAC 2-7.2, 836 IAC 4-6.1, and 836 IAC 4-7.1 to combine enforcement, waiver, and insurance and establish new certification and training requirements for advanced emergency medical technician intermediate personnel and providers. Repeals 836 IAC 1-2-4, 836 IAC 1-8-1, 836 IAC 1-11-5, 836 IAC 2-12-1, 836 IAC 2-13-1, 836 IAC 3-2-8, 836 IAC 3-3-8, 836 IAC 3-4-1, 836 IAC 4-2-5, and 836 IAC 4-10-1. Effective 30 days after filing with the secretary of state.

836 IAC 1-1-1
836 IAC 1-1-2
836 IAC 1-1-3
836 IAC 1-2-1
836 IAC 1-2-2
836 IAC 1-2-3
836 IAC 1-2-4
836 IAC 1-3-5
836 IAC 1-3-6
836 IAC 1-8-1
836 IAC 1-11-1
836 IAC 1-11-2
836 IAC 1-11-4
836 IAC 1-11-5
836 IAC 2-1-1
836 IAC 2-2-1
836 IAC 2-7.1-1
836 IAC 2-7.2
836 IAC 2-12-1
836 IAC 2-13-1
836 IAC 2-14-5
836 IAC 3-2-4
836 IAC 3-2-5
836 IAC 3-2-8
836 IAC 3-3-4
836 IAC 3-3-5
836 IAC 3-3-8
836 IAC 3-4-1
836 IAC 4-1-1
836 IAC 4-2-1
836 IAC 4-2-2
836 IAC 4-2-5
836 IAC 4-3-2
836 IAC 4-4-1
836 IAC 4-5-2
836 IAC 4-6.1
836 IAC 4-7-2
836 IAC 4-7.1
836 IAC 4-9-3
836 IAC 4-10-1

SECTION 1. 836 IAC 1-1-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-1-1 Definitions
Authority: IC 16-31-2-7
Affected: IC 16-18; IC 16-31-2-9; IC 16-31-3

Sec. 1. The following definitions apply throughout this article unless the context clearly denotes otherwise:

(1) "Ambulance" means any conveyance on land, sea, or air that is used, or is intended to be used, for the purpose of responding to emergency life-threatening situations and providing transportation of an emergency patient.

(2) "Ambulance service provider" means any person certified by the commission who engages in or seeks to

furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the transportation and care of emergency patients as a part of a regular course of doing business, either paid or voluntary.

(3) "Auto-injector" means a spring-loaded needle and syringe that:

(A) contains a single dose of medication; and

(B) automatically releases and injects the medication.

(4) "Basic life support" means the following:

(A) Assessment of emergency patients.

(B) Administration of oxygen.

(C) Use of mechanical breathing devices.

(D) Application of antishock trousers.

(E) Performance of cardiopulmonary resuscitation.

(F) Application of dressings and bandage materials.

(G) Application of splinting and immobilization devices.

(H) Use of lifting and moving devices to ensure safe transport.

(I) Use of an automatic or a semiautomatic defibrillator if the defibrillator is used in accordance with training procedures established by the commission.

(J) Administration by an emergency medical technician of epinephrine through an auto-injector.

(K) Other procedures authorized by the commission, including procedures contained in the revised national emergency medical technician-basic training curriculum guide.

The term does not include invasive medical care techniques, except for clause (J) and the training and certification standards established under IC 16-31-2-9(4) and the training and certification standards established under IC 16-31-2-9(5).

(5) "Certificate" or "certification" means authorization in written form issued by the commission to a person to furnish, operate, conduct, maintain, advertise, or otherwise engage in providing emergency medical services as a part of a regular course of doing business, either paid or voluntary.

~~(1)~~ **(6)** "Commission" means the Indiana emergency medical services commission.

~~(2)~~ **(7)** "Director" means the director of the state emergency management agency. ~~or the director's designee of the commission.~~

(8) "Emergency ambulance services" means the transportation of emergency patients by ambulance and the administration of emergency care procedures to emergency patients before or during such transportation.

(9) "Emergency medical service nontransport provider" means an organization, certified by the commission, that provides first response patient care at an emergency that includes defibrillation, but does not supply patient transport from the scene of the emergency.

(10) "Emergency medical services" means the provision of emergency ambulance services or other services utilized in serving an individual's need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

(11) "Emergency medical services driver" means an individual who has a certificate of completion of a commission-approved driver training course.

(12) "Emergency medical services provider" means any person certified by the commission who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the care of emergency patients as part of a regular course of doing business, either paid or voluntary.

(13) "Emergency medical services vehicle" means:

(A) an ambulance;

(B) an emergency medical service nontransport vehicle;

(C) a rescue squad; or

(D) an advanced life support nontransport vehicle.

(14) "Emergency medical technician" means an individual who is certified by the commission to provide basic life support at the scene of an accident, an illness, or during transport.

(15) "Emergency patient" means an individual who is acutely ill, injured, or otherwise incapacitated or helpless and who requires emergency care. The term includes an individual who requires transportation on a litter or cot or is transported in a vehicle certified as an ambulance under IC 16-31-3.

(16) "F.A.A." means the Federal Aviation Administration.

(17) "F.A.R." means the federal aviation regulations, including, but not limited to, 14 CFR.

(18) "Nontransporting emergency medical services vehicle" means a motor vehicle, other than an ambulance, used for emergency medical services. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.

~~(3)~~ **(19)** "Person" means any:

(A) natural person or persons;

~~(B) firm;~~

~~(C)~~ **(B)** partnership;

~~(D)~~ **(C)** corporation;

~~(E) company;~~

~~(F)~~ **(D)** association; ~~or~~

~~(G)~~ **(E)** joint stock association; **or**

~~and the legal successors thereof, including any~~

(F) governmental ~~agency or instrumentality,~~ **entity** other than an agency or instrumentality of the United States. ~~except that "an agency or instrumentality of the United States", as that phrase is used in IC 16-31-3-3(b), means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.~~

~~(4) "Emergency patient" means an individual who is acutely ill, injured, or otherwise incapacitated or helpless and who requires emergency care. The term includes an individual~~

~~who requires transportation on a litter or cot or is transported in a vehicle certified as an ambulance under IC 16-31-3.~~

~~(5) "Ambulance" means any conveyance on land, sea, or air that is used or is intended to be used, for the purpose of responding to emergency life-threatening situations and providing transportation of an emergency patient.~~

~~(6) "Ambulance service provider" means any person who is certified by the commission and who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the transportation and care of emergency patients as a part of a regular course of doing business, either paid or voluntary.~~

~~(7) "Emergency medical technician" means an individual certified by the commission who is:~~

~~(A) responsible for the administration of emergency care procedures to emergency patients and for the handling and transportation of such patients; and~~

~~(B) certified under this article.~~

~~(8) "Certificate" or "certification" means authorization in written form issued by the commission to a person to furnish, operate, conduct, maintain, advertise, or otherwise engage in providing emergency medical services as a part of a regular course of doing business, either paid or voluntary.~~

~~(9) "Emergency ambulance services" means the transportation of emergency patients by ambulance and the administration of emergency care procedures to emergency patients before, or during, such transportation.~~

~~(10) "Emergency medical services" means the provision of emergency ambulance services or other services utilized in serving an individual's need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.~~

~~(11) "ATCO" means air taxi and commercial operators, with reference to air taxi and commercial operators, operations certificate outlined in Federal Aviation Regulations, Part 135.~~

~~(12) "F.A.A." means the Federal Aviation Administration.~~

~~(13) "F.A.R." means the federal aviation regulations, including, but not limited to, the following parts:~~

~~(A) F.A.R. relative to the certification of pilots and instructors.~~

~~(B) F.A.R. relative to medical standards and certification of pilots and other F.A.A. related personnel.~~

~~(C) F.A.R. relative to general operating and flight rules.~~

~~(D) F.A.R. relative to air taxi and commercial operators of small aircraft.~~

~~(14) "A.G.L." means above ground level.~~

~~(15) "Emergency medical services provider" means any person certified by the commission who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the care of emergency patients as part of a regular course of doing business, either paid or voluntary.~~

~~(16) "Rescue squad organization" means an organization that holds a voluntary certification to provide extrication, rescue, or emergency medical services.~~

~~(17) "Emergency medical services driver" means an individual who has a certificate of completion of a commission approved driver training course.~~

~~(18) "Emergency medical service nontransport provider" means an organization, certified by the commission, that provides first response patient care at an emergency that includes defibrillation but does not supply patient transport from the scene of the emergency.~~

~~(19) "Emergency medical service nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, which provides first response patient care at an emergency that includes defibrillation but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.~~

~~(20) "Emergency medical services vehicle" means:~~

~~(A) an ambulance;~~

~~(B) an emergency medical service nontransport vehicle;~~

~~(C) a rescue squad; or~~

~~(D) an advanced life support nontransport vehicle.~~

~~(21) "Basic life support" means the following:~~

~~(A) Assessment of emergency patients.~~

~~(B) Administration of oxygen.~~

~~(C) Use of mechanical breathing devices.~~

~~(D) Application of antishock trousers.~~

~~(E) Performance of cardiopulmonary resuscitation.~~

~~(F) Application of dressings and bandage materials.~~

~~(G) Application of splinting and immobilization devices.~~

~~(H) Use of lifting and moving devices to ensure safe transport.~~

~~(I) Use of an automatic or a semiautomatic defibrillator if the defibrillator is used in accordance with training procedures established by the commission.~~

~~(J) Other procedures authorized by the commission, including procedures contained in the revised national emergency medical technician-basic training curriculum guide.~~

(20) "Rescue squad organization" means an organization that holds a voluntary certification to provide extrication, rescue, or emergency medical services.

(Indiana Emergency Medical Services Commission; Emergency Medical Services Preliminary; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 84; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2191; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1035; filed Aug 18, 1986, 1:00 p.m.: 10 IR 23; filed May 15, 1998, 10:25 a.m.: 21 IR 3865; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2718; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2333)

SECTION 2. 836 IAC 1-1-2 IS ADDED TO READ AS FOLLOWS:

836 IAC 1-1-2 Enforcement

Authority: IC 16-31-2-7; IC 16-31-3-14; IC 16-31-3-14.5; IC 16-31-3-15
Affected: IC 4-21.5-3; IC 4-21.5-4; IC 4-22; IC 16-31-2-9; IC 16-31-3-17; IC 16-31-10-1

Sec. 2. (a) After notice and hearing, the commission may suspend, revoke, or refuse to issue or reissue any certificate issued under IC 16-31-3 and this title for any of the following reasons:

(1) Demonstrated incompetence or inability to provide adequate services as defined in any Indiana commission approved training curricula for which a person has completed to acquire certification.

(2) Deceptive or fraudulent procurement of certification or recertification credentials and/or documentation.

(3) Willful or negligent practice beyond the scope of practice as defined by any Indiana commission- approved training curricula and this title.

(4) Delegating a skill to a person not qualified.

(5) Abuse or abandonment of a patient.

(6) Rendering of services under the influence of alcohol or drugs.

(7) Operation of an emergency medical services vehicle in a reckless or grossly negligent manner or while under the influence of alcohol or drugs.

(8) Unauthorized disclosure of medical records or other confidential patient information.

(9) Willful preparation or filing of false medical reports, or the inducement of others to do so.

(10) Unauthorized destruction of medical records.

(11) Refusal to respond to a call or to render emergency medical care when operating in an official capacity because of a patient's race, sex, creed, national origin, sexual preference, age, disability, or medical condition.

(12) Failure to comply with any part of IC 16-31-3 or this title.

(13) Conviction of a crime listed under IC 16-31-3-14.5 or IC 16-31-3-15. As used in this section, "conviction" means:

(A) a finding of guilt by a judge or jury;

(B) a guilty plea;

(C) a plea of nolo contendere or non-vult; or

(D) accepting entry into a pretrial intervention program.

(14) Willful or wanton misuse or theft of any drug, medication, or medical equipment.

(15) Willful obstruction of any official of the commission or other agency empowered to enforce the provisions of this title or Indiana law.

(16) Revocation or suspension of certification or license as a first responder, emergency medical technician, advanced emergency medical technician, advanced emergency medical technician intermediate, paramedic, instructor, or other medical professional by any other state or federal jurisdiction.

(17) Any conduct that poses a threat to public health, safety, or welfare.

(b) After notice and hearing, the director may penalize an ambulance service provider or a person certified under this title up to five hundred dollars ($500) per occurrence for a violation of a patient care standard, protocol, operating procedure, or rule established by the commission.

(c) The commission or the director may, on finding that the public health or safety is in imminent danger, may *[sic.]* **temporarily suspend a certificate without hearing for not more than ninety (90) days on a notice to the certificate holder pursuant to IC 16-31-3-14(d) and IC 4-21.5-4.** *(Indiana Emergency Medical Services Commission; 836 IAC 1-1-2; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2335)*

SECTION 3. 836 IAC 1-1-3 IS ADDED TO READ AS FOLLOWS:

836 IAC 1-1-3 Request for waiver

Authority: IC 16-31-2-7
Affected: IC 16-31-2-11; IC 16-31-3-5

Sec. 3. (a) A provider or person certified or contemplating certification under this title may submit to the commission a written request that certain provisions of this title be waived. Such a request shall show that a proposed waiver, if approved, would not jeopardize the quality of patient care.

(b) The commission may approve a request based on one (1) or more of the following:

(1) Circumstances where public health and safety is a factor.

(2) Extenuating or mitigating circumstances that warrant consideration to assure the delivery of emergency medical services.

(3) Substitution of equipment authorized by this article.

(4) Testing of new procedures, techniques, and equipment in a pilot study authorized by the commission and supervised by the commission's designee.

(5) Special staffing or equipment requirements for a land ambulance providing interhospital emergency transportation of critical care patients.

(c) Out-of-state provider waiver requirements are as follows:

(1) Pursuant to IC 16-31-3-5, the commission shall waive any rule for:

(A) a person who provides emergency ambulance service;

(B) an emergency medical technician; or

(C) an ambulance;

when operating from a location in an adjoining state by contract with an Indiana unit of government to provide emergency ambulance or medical services to patient who are picked up or treated in Indiana.

(2) To receive such a waiver, an applicant shall submit the following:

(A) An application that shall include the following information:

(i) Organizational structure, including name, address, and phone number for the owner, chief executive officer, chief operations officer, training officer, and medical director.

(ii) A description of the service area.

(iii) Hours of operation.

(iv) Proof of insurance coverage in amounts as specified in 836 IAC 1-3-6 shall be submitted with the application.

(v) Other information as required by the commission.

(B) A copy of the contract with the Indiana unit of government. This contract shall describe the emergency medical services that are to be provided.

(C) A list of the rule or rules for which the applicant is requesting a waiver.

(d) The commission may establish time limits and conditions on an approved waiver. An approved waiver will be effective for no more than two (2) years after the date of commission approval.

(e) A person or provider with an approved waiver may request that the commission renew this waiver. Such a request is subject to the requirements of this section. If the commission approves the request for renewal, the renewed waiver will expire two (2) years after the date of commission approval. *(Indiana Emergency Medical Services Commission; 836 IAC 1-1-3; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2336)*

SECTION 4. 836 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-2-1 General certification provisions

Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3

Sec. 1. (a) A person shall not engage in the business or service of providing emergency ambulance services upon any public way of the state unless they hold a valid certificate issued by the commission for engaging in such a business or service as an ambulance service provider.

(b) A certificate is not required for a person who provides emergency ambulance service, an emergency medical technician, or an ambulance when:

(1) rendering assistance to persons certified to provide emergency ambulance service or to emergency medical technicians;

(2) operating from a location or headquarters outside Indiana to provide emergency ambulance services to patients who are picked up outside Indiana for transportation to locations within Indiana;

(3) providing emergency medical services during a major catastrophe or disaster with which persons or ambulance services are insufficient or unable to cope;

(4) an agency or instrumentality of the United States and any emergency medical technicians or ambulances of such agency or instrumentality are not required to be certified or to conform to the standards prescribed under ~~836 IAC 1-1-1(3);~~ **836 IAC 1-1-1(19);** or

(5) transportation of a patient from another state into Indiana and returned **and returned** *[sic.]* **to original state of origin within twenty-four (24) hours.**

(c) Each ambulance, while transporting a patient, shall be staffed by not less than two (2) persons, one (1) of whom shall be a certified emergency medical technician and who shall be in the patient compartment unless an exemption is approved by the commission through ~~subsection (g).~~ **836 IAC 1-1-3.**

~~(d) After notice and hearing, the commission may and is authorized to suspend or revoke a certificate issued under IC 16-31 or impose a fine of up to five hundred dollars ($500) in accordance with section 4 of this rule, or both, for:~~

~~(1) fraud or misrepresentation in procuring certification; or~~

~~(2) failure to comply and maintain compliance with, or for violation of, any applicable provisions, standards, or other requirement of IC 16-31 or this title.~~

~~The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.~~

~~(e) Notwithstanding the provision of subsection (d), the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.~~

~~(f) Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.~~

~~(g) An ambulance service provider seeking certification of a land ambulance specially staffed, equipped, or uniquely designed to provide interhospital emergency transportation of critical care patients, for example:~~

~~(1) coronary care;~~

~~(2) high risk infant;~~

~~(3) poisoning;~~

~~(4) psychiatric; and~~

~~(5) alcohol and drug overdose;~~

~~may petition the commission for exemption from one (1) or more of the specifications or requirements listed in this article. The ambulance service provider shall submit with the application a description of the medical capability of each person who usually staffs the patient compartment when transporting an emergency patient and a description of radio communications capabilities. The commission may approve one (1) or more of the requested exemptions and grant certification. However, the commission may restrict any exemption(s) approved under this article. Exemption(s) requested shall not be approved if, in the~~

~~opinion of the commission, the exemption(s) would impair the capabilities of the ambulance service provider to provide proper emergency patient care.~~

~~(h)~~ **(d)** An ambulance service provider seeking certification for other than a land or air ambulance may petition the commission for any exemptions from one (1) or more of the requirements set forth in this article and 836 IAC 2.

~~(i)~~ **(e)** Each emergency patient shall be transported in a certified ambulance.

~~(j)~~ **(f) Each ambulance service provider shall do the following:**

(1) Notify the ~~commission~~ **director** in writing within thirty (30) days of any changes in **and** items ~~listed~~ **in the application required** in section 2(a) of this rule.

~~(k)~~ **(2)** Notify the ~~commission~~ **director** in writing immediately of change in medical director, including medical director approval form and protocols.

~~(l)~~ **(g)** Each ambulance service provider shall secure a medical director who shall be a physician with an unlimited license to practice medicine in Indiana and who has an active role in the delivery of emergency care. The duties and responsibilities of the medical director are as follows:

(1) Provide liaison between the local medical community and the emergency medical service provider.

(2) Assure compliance with defibrillation training standards and curriculum established by the commission.

(3) Monitor and evaluate the day-to-day medical operations of the ~~emergency medical~~ **ambulance** service **provider** organization.

(4) Assist in the continuing education programs of the ~~emergency medical~~ **ambulance** service **provider** organization.

(5) Provide technical assistance concerning the delivery of automated defibrillation and other medical issues.

(6) Provide individual consultation to the emergency medical personnel affiliated with the ~~emergency medical~~ **ambulance** service **provider** organization.

(7) Participate in the audit and review of cases treated by the emergency medical personnel of the ~~emergency medical~~ **ambulance** service **provider** organization.

(8) Assure compliance with approved medical standards established by the commission performed by **ambulance service provider** organization.

(9) Establish protocols for automatic defibrillation, airway management, patient-assisted medications, and emergency medical technician-administered medications as approved by the commission.

(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule I, A; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 84; filed Dec 15, 1977: Rules and Regs. 1978, p. 244; filed Dec 15, 1977: Rules and Regs. 1978, p. 245; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2192; errata, 4 IR 531; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2419; filed Dec 2, 1983, 2:43 p.m.: 7 IR 352; errata, 7 IR 1254; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1036; filed Aug 18, 1986, 1:00 p.m.: 10 IR 24; filed May 15, 1998, 10:25 a.m.: 21 IR 3866; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2719; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2506; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2337)

SECTION 5. 836 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-2-2 Application for certification; renewal

Authority: IC 16-31-2-7
Affected: IC 16-31-3-8

Sec. 2. (a) Application for ambulance service provider certification shall be made on forms as prescribed by the commission, and the applicant shall comply with the following requirements:

(1) Applicants shall complete the required forms and submit the forms to the director not less than sixty (60) days prior to the requested effective date of the certificate.

(2) Each ambulance, with its equipment as required in this article, shall be made available for inspection by the director or the director's ~~duly~~ authorized representative.

(3) The premises on which ambulances are parked or garaged and on which ambulance supplies are stored shall be open during business hours to the director, or the director's ~~duly~~ authorized representative, for inspection.

(4) A complete listing of affiliated personnel to be utilized as emergency medical technicians, first responders, and drivers shall be submitted to the director. The director shall be notified in writing within thirty (30) days of any change in personnel.

(5) Each application shall include the following information:

(A) A description of the service area.

(B) Hours of operation.

(C) Number and location of ambulances.

(D) Organizational structure, including name, address, and phone number for the owner, chief executive officer, chief operations officer, training officer, and medical director.

(E) Current Federal Communications Commission license or letter of authorization.

(F) Location of ambulance service provider's records.

(G) Proof of insurance coverage in amounts as specified in section 3(g) of this rule shall be submitted with the application and shall be renewed thirty (30) days prior to the expiration of the current insurance.

(H) Other information as required by the commission.

(b) Upon approval, a certificate shall be issued by the director. The certificate shall be:

(1) valid for a period of two (2) years; ~~unless earlier revoked or suspended by the commission~~ and ~~shall be~~

(2) prominently displayed at the place of business.

(c) Application for ambulance service provider certification

renewal shall be made not less than sixty (60) days prior to the expiration date of the current certificate to assure continuity of certification. Application for renewal shall be made on forms as prescribed by the commission. ~~and shall indicate compliance with the requirements set forth for original certification.~~

~~(d) Ambulance service providers in states immediately adjacent to Indiana who provide ambulance service within Indiana under a contract with an Indiana local unit of government shall be certified by the commission in accordance with this article or apply for waiver of this article so long as the following requirements are met:~~

~~(1) The Indiana local unit of government shall do the following:~~

~~(A) Notify the commission of the intent to provide emergency medical services to residents of their area of responsibility when such services will be provided by an ambulance service in an adjacent state not certified by the commission and said ambulance service is unable to comply with this article for certification.~~

~~(B) Provide a copy of a legally binding contract for services describing the conditions under which emergency medical services will be provided.~~

~~(C) Show proof of the issuance of public notice describing any and all differences between the state standards in existence for the contracted provider of ambulance service and the standards adopted by the commission.~~

~~(D) The commission may issue certification under this provision for a period of two (2) years.~~

~~(2) The commission may revoke certification of the contracted ambulance service provider immediately upon determining that the contracted ambulance service provider is in violation of existing adjacent state rules and regulations regarding the provision of emergency medical services.~~

~~(3) Violations of Indiana patient care standards or standards existing under the contracted ambulance service providers state rules and regulations are subject to the provision and levying of fines as described in section 4 of this rule at the discretion of the director and shall be the responsibility of the Indiana local unit of government as the contractee.~~

(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule I,B; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 86; filed May 10, 1977, 10:52 a.m.: Rules and Regs. 1978, p. 218; filed Dec 15, 1977: Rules and Regs. 1978, p. 245; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2193; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2420; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1037; filed Aug 18, 1986, 1:00 p.m.: 10 IR 25; filed May 15, 1998, 10:25 a.m.: 21 IR 3867; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2720; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2338)

SECTION 6. 836 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-2-3 Ambulance service provider operating procedures

Authority: IC 16-31-2-7
Affected: IC 16-18; IC 16-31-3-2; IC 34-6-2-49

Sec. 3. (a) Each ambulance service provider shall maintain accurate records concerning the transportation of each emergency patient within Indiana, including an ambulance run report form in an electronic or written format as prescribed by the commission as follows:

(1) An ambulance run report form shall be required by all ambulance providers including, at a minimum, the following information about the patient:

(A) Name.
(B) Identification number.
(C) Age.
(D) Sex.
(E) Date of birth.
(F) Race.
(G) Address, including zip code.
(H) Location of incident.
(I) Chief complaint.
(J) History, including the following:
(i) Current medical condition and medications.
(ii) Past pertinent medical conditions and allergies.
(K) Physical examination section.
(L) Treatment given section.
(M) Vital signs, including the following:
(i) Blood pressure.
(ii) Pulse.
(iii) Respirations.
(iv) Level of consciousness.
(v) Skin temperature and color.
(vi) Pupillary reactions.
(vii) Ability to move.
(viii) Presence or absence of breath sounds.
(ix) The time of observation and a notation of the quality for each vital sign should also be included.
(N) Responsible guardian.
(O) Hospital destination.
(P) Radio contact via UHF or VHF.
(Q) Name of patient attendants, including emergency medical service certification numbers.
(R) Vehicle certification number.
(S) Safety equipment used by patient.
(T) Date of service.
(U) Service delivery times, including the following:
(i) Time of receipt of call.
(ii) Time dispatched.
(iii) Time arrived scene.
(iv) Time of departure from scene.
(v) Time arrived hospital.
(vi) Time departed hospital.
(vii) Time vehicle available for next response.
(viii) Time vehicle returned to station.

(2) The report form shall be designed in a manner to provide space for narrative notation of additional medical information. A copy of the form shall be provided to the receiving facility for the purpose of patient information and record.

(3) When a patient has signed a statement for refusal of treatment or transportation services, or both, that signed statement shall be maintained as part of the run documentation.

(b) All ambulance service providers shall participate in the emergency medical service system review by:

(1) collecting all data elements prescribed by the commission; and

(2) reporting that information according to procedures and schedules prescribed by the commission.

(c) An ambulance service provider shall not operate a land ambulance on any public way in Indiana ~~if~~ **unless** the ambulance is ~~not~~ in full compliance with the ambulance certification requirements established and set forth in this article, ~~or exemptions approved by the commission, and which does not have a certificate issued pursuant to IC 16-31,~~ except an ambulance service provider may operate, for a period not to exceed sixty (60) consecutive days, a noncertified ambulance if the noncertified ambulance is used to replace a certified ambulance that has been taken out of service providing the following:

(1) The replacement ambulance shall meet all certification requirements.

(2) The ambulance service provider shall notify the commission in writing within seventy-two (72) hours of the time the replacement ambulance is placed in service. The written notice shall identify the following:

(A) The replacement date.

(B) The certification number of the replaced ambulance.

(C) The vehicle identification number of the replacement ambulance.

(D) The make and type of the replacement ambulance.

Upon receipt of the notification, a temporary certificate shall be issued effective the date the certified ambulance was replaced. Temporary certification shall not exceed sixty (60) days and, upon return to service, the use of the replacement vehicle shall cease and the temporary certificate shall be returned to the commission. ~~If the replaced ambulance is not returned to service within the sixty (60) day period, use of the replacement ambulance shall cease unless certification is approved in accordance with 836 IAC 1-3.~~

(d) The ambulance service provider's premises shall be maintained, suitable to the conduct of the ambulance service, with provision for adequate storage of ambulances and equipment.

(e) Each ambulance service provider shall provide for a periodic maintenance program to assure that all ambulances, including equipment, are maintained in good working condition ~~and that rigid sanitation procedures are in effect~~ at all times.

(f) All ambulance service provider premises, records, garaging facilities, and ambulances shall be made available for inspection by the commission, director, or a duly authorized representative at any time during operating hours.

~~(g) The insurance requirement of IC 16-31-3-2(2) is satisfied if the ambulance service provider:~~

~~(1) has in force and effect public liability insurance in the sum of not less than three hundred thousand dollars ($300,000) combined single limit, issued by an insurance company licensed to do business in Indiana; or~~

~~(2) is a government entity within the meaning of IC 34-6-2-49. Coverage shall be for every ambulance owned or operated by or for the ambulance service provider.~~

~~(h)~~ **(g)** Each ambulance service provider shall provide and maintain a communication system that meets or exceeds the requirements set forth in 836 IAC 1-4.

~~(i)~~ **(h)** Each ambulance service provider shall designate one (1) person as the organization's training officer to assume responsibility for in-service training. This person shall be certified as an emergency medical technician, an advanced emergency medical technician, a paramedic, a registered nurse, a certified physician assistant, or a licensed physician who is actively involved in the delivery of emergency medical services with that organization. The training officer shall be responsible for the following:

(1) Providing and maintaining records of in-service training offered by the provider organization.

(2) Maintaining the following in-service training session information:

(A) Summary of the program content.

(B) The name of the instructor.

(C) The names of those attending.

(D) The date, time, and location of the in-service training sessions.

(3) Signing individual emergency medical technician training records or reports to verify actual time in attendance at ~~a~~ training sessions.

~~(j)~~ **(i)** An ambulance service provider shall not act in a reckless or negligent manner so as to endanger the health or safety of emergency patients or members of the general public while in the course of business as an ambulance service provider.

~~(k)~~ **(j)** Each ambulance service provider shall notify the director within thirty (30) days of the present and past specific location of any ambulance if the location of the ambulance is changed from that specified in the provider's application for ambulance service provider certification or certification renewal.

~~(l)~~ **(k)** Each ambulance service provider shall, within seven (7) consecutive days of the date a certified ambulance is permanently withdrawn from service, return to the director the certificate and window sticker issued by the commission for the ambulance.

~~(m)~~ **(l)** No certified ambulance service provider may operate

any noncertified vehicle that displays to the public any word, phrase, or marking that implies in any manner that the vehicle is an ambulance as defined in IC 16-18 unless the vehicle is used solely in another state for patient care.

~~(n)~~ **(m)** Each ambulance service provider shall ensure that rigid sanitation procedures are in effect at all times. The following sanitation standards apply to all ambulances:

(1) The interior and the equipment within the vehicle shall be clean and maintained in good working order at all times.

(2) Freshly laundered linen or disposable linens shall be used on litters and pillows, and linen shall be changed after each patient is transported.

(3) Clean linen storage shall be provided.

(4) Closed compartments shall be provided within the vehicle for medical supplies.

(5) Closed containers shall be provided for soiled supplies.

(6) Blankets shall be kept clean and stored in closed compartments.

(7) Implements inserted into the patient's nose or mouth shall be single-service, wrapped, and properly stored and handled. Multi-use items shall be kept clean and sterile when indicated and properly stored.

(8) When a vehicle has been utilized to transport a patient known to have a communicable disease or suffered exposure to hazardous material or biohazard material, the vehicle and equipment shall be cleansed and all contact surfaces washed in accordance with current decontamination and disinfecting standards. All hazardous and biohazard materials shall be disposed of in accordance with current hazardous and biohazard disposition standards.

~~(o)~~ **(n)** An ambulance service provider shall not engage in the provision of advanced life support as defined in IC 16-18 unless:

(1) the ambulance service provider is certified pursuant to 836 IAC 2 and the vehicle meets the requirements of 836 IAC 2; or

(2) an exemption has been granted or authorized for the ambulance service provider and vehicle(s) pursuant to this article or 836 IAC 2.

~~(p)~~ **(o)** Each emergency medical services provider, under the responsibility of its chief executive officer and medical director, shall conduct audit and review at least quarterly to assess, monitor, and evaluate the quality of patient care as follows:

(1) The audit shall evaluate patient care and personnel performance against established standards of care.

(2) The results of the audit shall be reviewed with the emergency medical service personnel.

(3) Documentation for the audit and review shall include the following:

(A) The criteria used to select audited runs.

(B) Problem identification and resolution.

(C) Date of review.

(D) Attendance at the review.

(E) A summary of the discussion at the review.

(4) The audit and review shall be conducted under the direction of one (1) of the following:

(A) The emergency medical services provider medical director.

(B) An emergency department committee that is supervised by a medical director. An emergency medical services provider representative shall serve as a member on the committee.

(C) A committee established by the emergency medical services provider.

~~(q)~~ **(p)** An ambulance service provider may operate ~~an~~ **a nontransport** emergency medical services vehicle ~~as a an emergency medical service nontransport vehicle~~ in accordance with 836 IAC 1-11-4.

~~(r)~~ **(q)** All records shall be retained for a minimum of three (3) years, except for the following records that shall be retained for a minimum of seven (7) years:

(1) Audit and review records.

(2) Run reports.

(3) Training records.

~~(s)~~ **(r)** An ambulance service provider ~~and any affiliated emergency medical technician possessing~~ **with** approval ~~for intravenous line maintenance training~~ from the **provider organization's** medical director may transport a patient ~~from a medical care facility if the only advanced life support procedure that has been previously initiated for the patient is an intravenous line administering prepackaged solutions that may contain~~ **with** the following: ~~additives and no others:~~

(1) ~~Vitamins.~~ **PCA pump with any medication or fluid infusing through a peripheral IV.**

(2) ~~Sodium chloride, excluding saline solutions in excess of nine-tenths percent (0.9%) concentration.~~ **Medication infusing through a peripheral IV or continuous subcutaneous catheter via a closed, locked system.**

(3) ~~Potassium chloride (twenty (20) milliequivalent per liter maximum).~~ **A central catheter that is clamped off.**

~~(4) Crystalloid solution.~~

~~This requirement applies so long as the ambulance meets all certification requirements under IC 16-31 and all staffing and equipment requirements of this article.~~

(4) A patient with a feeding tube that is clamped off.

(5) A patient with a Holter monitor.

(6) A patient with a peripheral IV infusing vitamins.

(7) IV fluids infusing through a peripheral IV via gravity or an infusing system that allows the technician to change the rate of infusion are limited to D5W, Lactated Ringers, sodium chloride (nine-tenths percent (0.9%) or less), potassium chloride (twenty (20) milliequivalent per liter or less for emergency medical technicians, forty (40) milliequivalent per liter or less for advanced emergency medical technicians).

(s) An ambulance service provider who has any certified vehicles involved in any traffic accident investigated by a law enforcement agency must report that accident to the commission within ten (10) working days on a form prescribed by the commission. At no time will piggy-back or secondary intravenous line or blood products be transported. *(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule I, C; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 86; filed May 10, 1977, 10:52 a.m.: Rules and Regs. 1978, p. 218; filed Dec 15, 1977: Rules and Regs. 1978, p. 245; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2194; errata, 4 IR 531; filed Dec 2, 1983, 2:43 p.m.: 7 IR 353; errata, 7 IR 1254; errata, 7 IR 1551; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1038; filed Aug 18, 1986, 1:00 p.m.: 10 IR 26; filed Oct 11, 1988, 11:05 a.m.: 12 IR 354; filed May 15, 1998, 10:25 a.m.: 21 IR 3868; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2721; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2339)*

SECTION 7. 836 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-3-5 Emergency care equipment

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 5. Each and every ambulance will have the following minimum emergency care equipment, and this equipment shall be assembled and readily accessible:

(1) Respiratory and resuscitation equipment as follows:
  (A) Portable suction apparatus, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.
  (B) On-board suction, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.
  (C) Bag-mask ventilation units, hand operated, one (1) unit in each of the following sizes, each equipped with clear face masks and oxygen reservoirs with oxygen tubing:
    (i) Adult.
    (ii) Child.
    (iii) Infant.
    (iv) Neonatal (mask only).
  (D) Oropharyngeal airways, two (2) each of adult, child, and infant.
  (E) One (1) pocket mask with one-way valve.
  (F) Portable oxygen equipment of at least three hundred (300) liters capacity (D size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.
  (G) On-board oxygen equipment of at least three thousand (3,000) liters capacity (M size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.
  (H) Oxygen delivery devices shall include the following:
    (i) High concentration devices, two (2) each, adult, child, and infant.
    (ii) Low concentration devices, two (2) each, adult.
  (I) Nasopharyngeal airways, two (2) each of the following with water soluble lubricant:
    (i) Small (20-24 french).
    (ii) Medium (26-30 french).
    (iii) Large (31 french or greater).
  (J) Bulb syringe individually packaged in addition to obstetrics kit.
  (K) Nonvisualized airway minimum of two (2) with water soluble lubricant.
  (L) Semiautomatic or automated external defibrillator and a minimum of two (2) sets of pads.
(2) Wound care supplies as follows:
  (A) Multiple trauma dressings, two (2) approximately ten (10) inches by thirty-six (36) inches.
  (B) Fifty (50) sterile gauze pads, three (3) inches by three (3) inches or larger.
  (C) Bandages, four (4) soft roller self-adhering type, two (2) inches by four (4) yards minimum.
  (D) Airtight dressings, four (4), for open chest wounds.
  (E) Adhesive tape, two (2) rolls.
  (F) Burn sheets, two (2), sterile.
  (G) Triangular bandages, four (4).
  (H) Bandage shears, one (1) pair.
(3) Patient stabilization equipment as follows:
  (A) Traction splint, lower extremity, limb-supports, padded ankle hitch, and traction strap, or equivalent, one (1) assembly in adult size.
  (B) Upper and lower extremity splinting devices, two (2) each.
  (C) One (1) splint device intended for the unit-immobilization of head-neck and torso. These items shall include the splint itself and all required accessories to provide secure immobilization.
  (D) One (1) long back board with accessories to provide secure spinal immobilization.
  (E) Rigid extrication collar, two (2) each capable of the following sizes:
    (i) Pediatric.
    (ii) Small.
    (iii) Medium.
    (iv) Large.
  (F) One (1) ambulance litter with side rails, head-end elevating capacity, mattress pad, and a minimum of three (3) adjustable restraints to secure the chest, hip, and knee areas.
(4) Medications ~~limited to,~~ if approved by medical director, ~~the following:~~ **and solely for use by individuals with a certification as an emergency medical technician or higher, are as follows:**
  (A) Baby aspirin, eighty-one (81) milligrams each.
  (B) Activated charcoal.
  (C) Instant glucose.
  (D) Epinephrine auto-injector(s).
(5) Personal protection/universal precautions equipment, minimum of two (2) each, including the following:

(A) Gowns.
(B) Face masks and shields.
(C) Gloves.
(D) Biohazard bags.
(E) Antimicrobial hand cleaner.
(6) Miscellaneous items as follows:
(A) Obstetrical kit, sterile, one (1).
(B) Clean linens consisting of the following:
(i) Pillow.
(ii) Pillow case.
(iii) Sheets and blankets.
(C) Blood pressure manometer, one (1) each in the following cuff sizes:
(i) Large adult.
(ii) Adult.
(iii) Pediatric.
(D) Stethoscopes, one (1) each in the following sizes:
(i) Adult.
(ii) Pediatric.
(E) Sharps collector, one (1) being a minimum of seven (7) inches in height.
(F) A current copy of the basic life support protocols.

(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule II, E; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 93; filed May 10, 1977, 10:52 a.m.: Rules and Regs. 1978, p. 219; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2200; filed Dec 2, 1983, 2:43 p.m.: 7 IR 355; errata, 7 IR 1254; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1045; filed Aug 18, 1986, 1:00 p.m.: 10 IR 31; filed May 15, 1998, 10:25 a.m.: 21 IR 3875; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2727; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2507; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2342)

SECTION 8. 836 IAC 1-3-6 IS ADDED TO READ AS FOLLOWS:

836 IAC 1-3-6 Insurance
Authority: IC 16-31-2-7
Affected: IC 16-31-3; IC 16-31-3-17; IC 34-13-3

Sec. 6. (a) This section does not apply to ambulances owned by a governmental entity covered under IC 34-13-3.

(b) The commission may not issue a certification for an ambulance until the applicant has filed with the commission a certificate of insurance indicating that the applicant has liability insurance:
(1) in effect with an insurer that is authorized to write insurance in Indiana; and
(2) that provides general liability coverage to a limit of at least:
(A) one million dollars ($1,000,000) for the injury or death of any number of persons in any one (1) occurrence; and
(B) five hundred thousand dollars ($500,000) for property damage in any one (1) occurrence.

(c) An insurance policy required under this section may include a deductible clause if the clause provides that any settlement made by the insurance company with an injured person or a personal representative must be paid as though the deductible clause did not apply.

(d) An insurance policy required under this section must provide, by the policy's original terms or an endorsement, that the insurer may not cancel the policy without:
(1) thirty (30) days written notice; and
(2) a complete report of the reasons for the cancellation to the office.

(e) An insurance policy required under this section must provide, by the policy's original terms or an endorsement, that the insurer shall report to the department within twenty-four (24) hours after the insurers pay a claim or reserves any amount to pay an anticipated claim that reduces the liability coverage below the amounts established in this section.

(f) If an insurance policy required under this section:
(1) is canceled during the policy's term;
(2) lapses for any reason; or
(3) has the policy's coverage fall below the required amount;
the owner of the ambulance shall replace the policy with another policy that complies with this section.

(g) If the owner of the ambulance fails to file a certificate of insurance for new or replacement insurance, the owner of the ambulance:
(1) must cease all operations under the certification immediately; and
(2) may not conduct further operations until the owner of the ambulance receives the approval of the commission to resume operations after the owner of the ambulance complies with the requirements of this section.

(Indiana Emergency Medical Services Commission; 836 IAC 1-3-6; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2343)

SECTION 9. 836 IAC 1-11-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-11-1 General certification provisions
Authority: IC 16-31-2-7
Affected: IC 4-33; IC 5-2-5-1; IC 16-21; IC 16-31; IC 22-12-1-12

Sec. 1. ~~(a)~~ An organization eligible to be a certified emergency medical services nontransport provider shall be an established emergency services organization and shall be one (1) of the following:
(1) Fire department as defined in IC 22-12-1-12.
(2) Law enforcement agency as defined in IC 5-2-5-1.
(3) Hospital as licensed under IC 16-21.
(4) Any provider organization certified under IC 16-31.

(5) Indiana gaming organizations as defined in IC 4-33.
(6) Other organizations approved by the commission.

~~(b) Notwithstanding subsection (a), the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.~~

~~(c) Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.~~

~~(d) After notice and hearing, the commission may, and is authorized to, suspend or revoke a certificate issued under IC 16-31 or impose a fine of up to five hundred dollars ($500) in accordance with section 5 of this rule, or both, for:~~
~~(1) fraud or misrepresentation in procuring certification; or~~
~~(2) failure to comply and maintain compliance with, or for violation of, any applicable provision, standard, or other requirement of IC 16-31 or this title.~~
~~The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.~~ *(Indiana Emergency Medical Services Commission; 836 IAC 1-11-1; filed May 15, 1998, 10:25 a.m.: 21 IR 3887; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2728; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2508; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2343)*

SECTION 10. 836 IAC 1-11-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-11-2 Application for certification; renewal
Authority: IC 16-31-2-7
Affected: IC 16-31-3-2; IC 16-31-3-8

Sec. 2. (a) Application for emergency medical services nontransport provider certification shall be made on forms as prescribed by the commission, and the applicant shall comply with the following requirements:
(1) Applicants shall complete the required forms and submit the forms to the director not less than sixty (60) days prior to the requested effective date of the certificate.
(2) Each emergency medical services vehicle, with its equipment as required by this article, shall be made available for inspection by the director or the director's duly authorized representative.
(3) The premises on which emergency medical services vehicle supplies are stored shall be open during operating hours to the director or the director's duly authorized representative, for inspection.
(4) A complete listing of affiliated personnel to be utilized as emergency medical technicians, first responders, and emergency medical services vehicle drivers shall be submitted to the director. The director shall be notified in writing within thirty (30) days of any change in personnel.
(5) Each application shall include the following information:
(A) A description of the service area.
(B) Hours of operation.
(C) Number and location of emergency medical services vehicles.
(D) Organizational structure, including names, addresses, and telephone numbers of the owner, chief executive officer, chief operations officer, training officer, and medical director.
(E) Current Federal Communications Commission license or letter of authorization.
(F) Location of emergency medical services nontransport provider's records.
(G) Proof of insurance coverage in adequate amounts as specified in ~~subsection (d)~~ **836 IAC 1-3-6** shall be submitted with the application and shall be renewed thirty (30) days prior to the expiration of the current insurance.
(H) Other information as required by the commission.

(b) Upon approval, a certificate shall be issued by the director. The certificate shall be valid for a period of two (2) years unless earlier revoked or suspended by the commission and shall be prominently displayed at the place of business.

(c) Application for emergency medical services nontransport provider certification renewal shall be made not less than sixty (60) days prior to the expiration date of the current certificate to assure continuity of certification. Application for renewal shall be made on forms as prescribed by the commission and shall indicate compliance with the requirements set forth for original certification.

~~(d) Emergency medical services nontransport providers in states immediately adjacent to Indiana who will be providing emergency medical services vehicle service within Indiana under a contract with an Indiana local unit of government shall be certified by the Indiana emergency medical services commission in accordance with this article or apply for waiver of this article so long as the following requirements are met:~~
~~(1) The Indiana local unit of government shall meet the following requirements:~~
~~(A) Notify the Indiana emergency medical services commission of the intent to provide emergency medical services to residents of their area of responsibility when such services will be provided by an emergency medical services vehicle service in an adjacent state not certified by the Indiana emergency medical services commission and said emergency medical services vehicle service is unable to comply with this article for certification.~~
~~(B) Provide a copy of a legally binding contract for services that outlines the conditions under which emergency medical services will be provided.~~
~~(C) Show proof of the issuance of public notice that describes any and all differences between the state standards in existence for the contracted provider of emergency~~

~~medical service and the standards adopted by the commission.~~

~~(D) The commission may issue certification under this provision for a period of two (2) years.~~

~~(2) The commission may revoke certification of the contracted emergency medical services nontransport provider immediately upon determining that the contracted emergency medical services nontransport provider is in violation of existing adjacent state rules and regulations regarding the provision of emergency medical services.~~

~~(3) Violations of Indiana patient care standards or standards existing under the contracted emergency medical services nontransport providers state rules and regulations are subject to the provision and levying of fines as described in 836 IAC 1-2-4 at the discretion of the director and shall be the responsibility of the Indiana local unit of government as the contractee.~~

~~(c)~~ **(d)** Emergency medical services nontransport providers shall submit a copy of an agreement between the nontransporting organization and an ambulance service provider certified pursuant to IC 16-31. The agreement shall ensure that the nontransporting organization can be assured that patients treated shall be transported in a timely and safe manner. The agreement shall not preclude another ambulance service provider, if available, from transporting the patients. *(Indiana Emergency Medical Services Commission; 836 IAC 1-11-2; filed May 15, 1998, 10:25 a.m.: 21 IR 3887; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2509; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2344)*

SECTION 11. 836 IAC 1-11-4 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-11-4 Emergency medical services nontransport provider emergency care equipment

Authority: IC 16-31-2-7
Affected: IC 16-31-3-2

Sec. 4. Every emergency medical services nontransport provider shall have one (1) set of the following assembled and readily accessible emergency care equipment for every vehicle utilized as an emergency medical service nontransport vehicle:

(1) Respiratory and resuscitation equipment as follows:

(A) Portable suction apparatus, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.

(B) Bag-mask ventilation units, hand operated, one (1) unit in each of the following sizes, each equipped with clear face masks and oxygen reservoirs with oxygen tubing:

(i) Adult.
(ii) Child.
(iii) Infant.
(iv) Neonatal (mask only).

(C) Portable oxygen equipment of at least three hundred (300) liters capacity (D size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter. Oxygen delivery devices shall include high concentration devices, one (1) each of the following:

(i) Adult.
(ii) Child.
(iii) Infant.

(D) Oropharyngeal airways, two (2) each of adult, child, and infant.

(E) One (1) pocket mask with one-way valve.

(F) Nasopharyngeal airways, two (2) each of the following:

(i) Small (20-24 french).
(ii) Medium (26-30 french).
(iii) Large (31 french or greater).

(G) Semiautomatic or automated external defibrillator and a minimum of two (2) sets of pads.

(2) Wound care supplies as follows:

(A) Ten (10) sterile gauze pads, three (3) inches by three (3) inches or larger.

(B) Bandages, two (2) soft roller self-adhering type, two (2) inches by four (4) yards minimum.

(C) Adhesive tape, two (2) rolls.

(D) Bandage shears, one (1) pair.

(3) Miscellaneous items as follows:

(A) Water soluble lubricant for airway insertion.

(B) Stethoscope, one (1).

(C) Blood pressure manometer, one (1) adult size.

(D) Diagnostic penlight or portable flashlight, one (1).

(E) Disposable gloves, two (2) pairs.

(F) A current copy of the basic life support protocols.

(4) Medications, if approved by medical director, and solely for use by individuals with a certification as an emergency medical technician or higher, are as follows:

(A) Baby aspirin, eighty-one (81) milligrams each.

(B) Activated charcoal.

(C) Instant glucose.

(D) Epinephrine auto-injector(s).

(Indiana Emergency Medical Services Commission; 836 IAC 1-11-4; filed May 15, 1998, 10:25 a.m.: 21 IR 3890; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2731; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2345)

SECTION 12. 836 IAC 2-1-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 2-1-1 Definitions

Authority: IC 16-31-2-7
Affected: IC 10-4-1-7; IC 10-8-2-1; IC 16-18-2-6; IC 16-21-2; IC 16-31-3-3; IC 25-22.5; IC 35-41-1-26.5

Sec. 1. The following definitions apply throughout this article unless the context clearly denotes otherwise and pertain to all advanced life support requirements and standards promulgated by the commission:

(1) "Advanced emergency medical technician" means an individual who can perform one (1) or more, but not all, of the procedures of a paramedic and who:

(A) has completed a prescribed course in advanced life support;

(B) has been certified by the commission;

(C) is associated with a single supervising hospital; and

(D) is affiliated with a provider organization.

(2) "Advanced emergency medical technician intermediate" means an individual who can perform one (1) or more, but not all, of the procedures of a paramedic and who:

(A) has completed a prescribed course in advanced life support;

(B) has been certified by the commission;

(C) is associated with a single supervising hospital; and

(D) is affiliated with a provider organization.

(3) "Advanced emergency medical technician intermediate organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technician intermediates in conjunction with a supervising hospital.

(4) "Advanced emergency medical technician organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technicians in conjunction with a supervising hospital.

(5) "Advanced life support", for purposes of IC 16-31, means:

(A) care given:

(i) at the scene of an:

(AA) accident;

(BB) act of terrorism (as defined in IC 35-41-1-26.5), if the governor has declared a disaster emergency under IC 10-4-1-7 in response to the act of terrorism; or

(CC) illness; or

(ii) during transport at a hospital;

by a paramedic, advanced emergency medical technician intermediate, or advanced emergency medical technician and that is more advanced than the care usually provided by an emergency medical technician; and

(B) may include:

(i) defibrillation;

(ii) endotracheal intubation;

(iii) parenteral injection of appropriate medications, including administration of epinephrine through an auto-injector;

(iv) electrocardiogram interpretation; and

(v) emergency management of trauma and illness.

(6) "Advanced life support nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, that provides advanced life support but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.

(7) "An agency or instrumentality of the United States", as that phrase is used in IC 16-31-3-3, means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.

(8) "Anniversary date" means the date on which certification as a paramedic, advanced emergency medical technician intermediate, or an advanced emergency medical technician was issued by the commission.

(9) "Auto-injector" means a spring-loaded needle and syringe that:

(A) contains a single dose of medication; and

(B) automatically releases and injects the medication.

(10) "Certificate" or "certification", for the purposes of IC 16-31, means authorization in written form issued by the Indiana emergency medical services commission to a person to furnish, operate, conduct, maintain, advertise, or otherwise engage in providing emergency medical services as part of a regular course of doing business, either paid or voluntary.

~~(1)~~ **(11)** "Commission" means the Indiana emergency medical services commission.

~~(2)~~ **(12)** "Director" means the director of the ~~commission.~~ **state emergency management agency established under IC 10-8-2-1.**

(13) "Emergency management of trauma and illness" means the following:

(A) Those procedures for which the paramedic has been specifically trained that are a part of the curriculum prescribed by the commission.

(B) Those procedures for which the paramedic has been specifically trained as a part of the continuing education program and approved by the supervising hospital and the paramedic organization's medical director.

(C) Those procedures for which the advanced emergency medical technician has been specifically trained in the Indiana basic emergency medical technician and Indiana advanced emergency medical technician curriculums and has been approved by the administrative and medical staff of the supervising hospital, the advanced emergency medical technician organization medical director, and the commission as being within the scope and responsibility of the advanced emergency medical technician.

(D) Those procedures for which the advanced emergency medical technician intermediate has been specifically trained in the Indiana basic emergency medical technician and Indiana advanced emergency medical technician intermediate curriculums and has been approved by the administrative and medical staff of the supervising hospital, the advanced emergency medical technician intermediate organization medical director, and the commission as being within the scope and

responsibility of the advanced emergency medical technician intermediate.

(14) "Emergency medical services vehicle" means an ambulance, an emergency medical service nontransport vehicle, a rescue squad, or an advanced life support nontransport vehicle.

(15) "Paramedic" means an individual who:

(A) is affiliated with a certified paramedic organization or is employed by a supervising hospital;

(B) has completed a prescribed course in advanced life support; and

(C) has been certified by the commission.

(16) "Paramedic organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by paramedics or physicians with an unlimited license to practice medicine in Indiana in conjunction with supervising hospitals.

~~(3)~~ **(17)** "Person" means any:

(A) natural person or persons;

~~(B) firm;~~

~~(C)~~ **(B)** partnership;

~~(D)~~ **(C)** corporation;

~~(E) company;~~

~~(F)~~ **(D)** association; ~~or~~

~~(G)~~ **(E)** joint stock association; **or**

~~and the legal successors thereof, including any~~

(F) governmental ~~agency or instrumentality,~~ **entity** other than an agency or instrumentality of the United States.

~~(4) "An agency or instrumentality of the United States", as that phrase is used in IC 16-31-3-3, means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.~~

~~(5) "Certificate" or "certification" means authorization in written form issued by the commission to a person:~~

~~(A) to operate and maintain advanced life support services;~~

~~(B) to act as an advanced emergency medical technician;~~

~~(C) to act as a paramedic; or~~

~~(D) to exercise the privileges as defined in this article.~~

~~(6) "Anniversary date" means the date on which certification as a paramedic, or an advanced emergency medical technician was issued by the commission.~~

~~(7) "Provider organization operating area" means the geographic area in which an advanced emergency medical technician, affiliated with a specific advanced emergency medical technician organization, is able to maintain two-way voice communication with the provider organization's supervising hospitals.~~

~~(8) "Provider organization" means an ambulance service or other emergency care organization certified by the commission to provide advanced life support in connection with a supervising hospital.~~

~~(9) "Advanced life support" means care given at the scene of an accident or illness, during transport, or at a hospital by a paramedic, or advanced emergency medical technician that is more advanced than that usually rendered by an emergency medical technician and may include, but is not limited to, the following:~~

~~(A) Manual defibrillation.~~

~~(B) Endotracheal intubation.~~

~~(C) Parenteral injection of appropriate medications.~~

~~(D) Electrocardiogram interpretation.~~

~~(E) Emergency management of trauma and illness.~~

~~(10) "Emergency management of trauma and illness" means the following:~~

~~(A) Those procedures for which the paramedic has been specifically trained that are a part of the curriculum prescribed by the commission.~~

~~(B) Those procedures for which the paramedic has been specifically trained as a part of the continuing education program and approved by the supervising hospital and the paramedic organization's medical director.~~

~~(C) Those procedures for which the advanced emergency medical technician has been specifically trained and have been approved by the administrative and medical staff of the supervising hospital, the advanced emergency medical technician organization medical director, and the commission as being within the scope and responsibility of the advanced emergency medical technician.~~

~~(11)~~ **(18)** "Physician" means an individual who currently holds a valid unlimited license to practice medicine issued in Indiana **under IC 25-22.5.**

~~(12) "Supervising hospital" means a hospital licensed under IC 16-21-2 or under the licensing laws of another state that has been certified by the commission to supervise paramedics, advanced emergency medical technicians, and provider organizations in providing advanced life support.~~

~~(13) "Advanced emergency medical technician" means a person who can perform one (1) or more, but not all, of the procedures of a paramedic and who:~~

~~(A) has completed a prescribed course in advanced life support;~~

~~(B) has been certified by the commission;~~

~~(C) is associated with a single supervising hospital; and~~

~~(D) is affiliated with a provider organization.~~

~~(14) "Advanced emergency medical technician organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technicians in conjunction with a supervising hospital.~~

~~(15) "Paramedic" means a person who:~~

~~(A) is affiliated with a certified paramedic organization or is employed by a supervising hospital;~~

~~(B) has completed a prescribed course in advanced life support; and~~

~~(C) has been certified by the commission.~~

~~(16) "Paramedic organization" means an ambulance service provider or other emergency care organization certified by the~~

~~commission to provide advanced life support services administered by paramedics or physicians with an unlimited license to practice medicine in Indiana in conjunction with supervising hospitals.~~

~~(17)~~ **(19)** "Program ~~coordinator"~~ **director"** means a person employed by a certified training institution that coordinates the advanced life support courses.

~~(18) "Advanced life support nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, that provides advanced life support but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.~~

~~(19) "Emergency medical services vehicle" means an ambulance, an emergency medical service nontransport vehicle, a rescue squad, or an advanced life support nontransport vehicle.~~

(20) "Provider organization" means an ambulance service or other emergency care organization certified by the commission to provide advanced life support in connection with a supervising hospital.

(21) "Provider organization operating area" means the geographic area in which an advanced emergency medical technician or advanced emergency medical technician intermediate, affiliated with a specific advanced emergency medical technician organization or advanced emergency medical technician intermediate organization, is able to maintain two-way voice communication with the provider organization's supervising hospitals.

(22) "Supervising hospital" means a hospital licensed under IC 16-21-2 or under the licensing laws of another state that has been certified by the commission to supervise paramedics, advanced emergency medical technician intermediates, advanced emergency medical technicians, and provider organizations in providing advanced life support.

(Indiana Emergency Medical Services Commission; Advanced Life Support Preliminary; filed Dec 15, 1977: Rules and Regs. 1978, p. 248; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2214; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2433; errata, 5 IR 400; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1061; filed May 15, 1998, 10:25 a.m.: 21 IR 3891; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2732; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2345)

SECTION 13. 836 IAC 2-2-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 2-2-1 General requirements for paramedic organizations

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 1. (a) Certification by the commission is required for any ambulance service provider who seeks to provide advanced life support services as a paramedic organization unless provisional certification is issued pursuant to subsection ~~(p).~~ **(l).**

(b) If the paramedic organization also provides transportation of emergency patients, the paramedic organization shall be certified as an ambulance service provider in accordance with the requirements specified in 836 IAC 1 pursuant to IC 16-31. The paramedic nontransport organizations shall meet the requirements specified in 836 IAC 1-2-2(a) and 836 IAC 1-11-3(o) through 836 IAC 1-11-3(q).

(c) The paramedic organization shall ensure that:

(1) ambulances used are certified and meet the requirements specified in 836 IAC 1-3; and

(2) all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements in 836 IAC 2-14.

(d) Paramedic organizations shall have a contract, or interdepartmental memo if hospital based, with one (1) or more supervising hospitals ~~for~~ **that agree to provide** the following services:

(1) Continuing education.

(2) Audit and review.

(3) Medical control and direction.

~~(4) Provision of arrangements and the supervision of arrangements for the supply of medications and other items utilized by emergency medical service clinical personnel in the provision of advanced life support service.~~

~~(5)~~ **(4)** Provision to allow the paramedics affiliated with the supervised paramedic organization to function within the appropriate hospital department in order to obtain continuing practice, **remediation, and continuing education** in their clinical skills.

The contract or interdepartmental memo shall include a detailed description of how such services shall be provided to the paramedic organization. In those cases where more than one (1) hospital contracts, or seeks to contract, with a paramedic provider organization as a supervising hospital, an interhospital agreement shall be provided to the commission that shall clearly define the specific duties and responsibilities of each hospital to ensure medical and administrative accountability of system operation.

(e) The paramedic organization shall have a medical director provided by the paramedic organization, or jointly with the supervising hospital, who shall be a physician who holds a currently valid unlimited license to practice medicine in Indiana and has an active role in the delivery of emergency care. The medical director is responsible for providing competent medical direction as established by the medical control committee. Upon establishment of a medical control policy, the paramedic organization medical director and the chief executive officer have the duty to enact the policy within the paramedic organization and accordingly enforce the policy. The duties and responsibilities of the medical director include, but are not limited to, the following:

(1) Provide liaison with physicians and the medical community.

(2) Assure that the drugs, medications, supplies, and equipment are available to the paramedic organization.
(3) Monitor and evaluate day-to-day medical operations of paramedic organizations.
(4) Assist **the supervising hospital** in the provision and coordination of continuing education.
(5) Provide information concerning the operation of the paramedic organization.
(6) Provide individual consultation to paramedics.
(7) Participate in at least quarterly audit and review of cases treated by paramedics of the provider organization.
(8) Attest to the competency of paramedics affiliated with the paramedic organization to perform skills required of a paramedic under 836 IAC 4-9-5.
(9) Establish protocols for advanced life support **in cooperation with the medical control committee of the supervising hospital.**
(10) Establish and publish a list of medications, including minimum quantities and dosages to be carried on **the emergency medical services** vehicle.

(f) The paramedic organization shall maintain a communications system that shall be available twenty-four (24) hours a day between the paramedic organization and the emergency department, or equivalent, of the supervising hospital using UHF (ultra high frequency) voice communications. The communications system shall be licensed by the Federal Communications Commission.

(g) Each paramedic organization shall do the following:
(1) Maintain an adequate number of trained personnel and emergency response vehicles to provide continuous, twenty-four (24) hour advanced life support services.
(2) Notify the commission in writing within thirty (30) days of assigning any individual to perform the duties and responsibilities required of a paramedic. This notification shall be signed by the provider organization and medical director of the provider organization.
(3) Notify the commission in writing within thirty (30) days of a paramedic's termination of employment or for any reason which prohibits a certified individual from performing the procedures required of a paramedic.

(h) ~~Each~~ **A paramedic organization** ambulance ~~used for the purpose of providing~~ **service provider must be able to provide an** advanced life support ~~services, when dispatched on an emergency run, shall be staffed by not less than two (2) persons, one (1) of whom is certified as~~ **response. For the purpose of this subsection, an "advanced life support response" consists of the following:**

(1) A paramedic. ~~and the other certified as~~

(2) An emergency medical technician. ~~pursuant to IC 16-31, except, if the~~

(3) An ambulance ~~is used in conjunction with a nonambulance vehicle certified by the commission for the provision of~~ **in compliance with the requirements of 836 IAC 2-2-3(e).**

(4) During transport of the patient, if advanced life support ~~it shall be staffed by at least~~ **treatment techniques have been initiated or are needed, at least one (1) paramedic shall be in the patient compartment of the ambulance. If advanced life support treatment techniques have not been initiated and are not needed, at least** one (1) **individual certified as an** emergency medical technician ~~certified pursuant to IC 16-31. However, each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run need only to be staffed, as a minimum, by a certified paramedic.~~ **or higher shall be in the patient compartment of the ambulance during transport of the patient.**

(i) **For a paramedic organization,** when **an** advanced life support ~~services administered by paramedics at the scene of an accident or illness are continued en route to an emergency facility, as a minimum, the patient compartment of the ambulance~~ **nontransport vehicle is dispatched, it** shall **at a minimum** be staffed by ~~not less than one (1) person who is certified as~~ a paramedic.

(j) The paramedic organization shall notify the commission in writing within thirty (30) days of any change in the services provided.

(k) No certification is required for the following:
(1) A person who provides advanced life support while assisting in the case of a major catastrophe or disaster, whereby persons who are certified to provide emergency medical services or advanced life support are insufficient or are unable to cope with the situation.
(2) An agency or instrumentality of the United States and any paramedics of such agency or instrumentality is not required to be certified nor to conform to the standards prescribed in this article.

~~(l) After proper notice and hearing, the commission may:~~
~~(1) levy penalties up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 and 836 IAC 2-13-1; or~~
~~(2) suspend or revoke a certificate issued under this article for:~~
~~(A) fraud or misrepresentation in procuring certification;~~
~~(B) failure to comply and maintain compliance; or~~
~~(C) violation of any applicable provisions, standards, or other requirements of this article.~~

~~(m) The commission may initiate proceedings to levy fines up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 and 836 IAC 2-13-1 or suspend or revoke a certificate upon its own motion or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with the provisions of IC 4-21.5.~~

~~(n) Notwithstanding the provisions of this article, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.~~

~~(o) Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease.~~

~~(p)~~ **(l)** The director may issue a provisional certification for the provision of advanced life support as a paramedic organization **for the purpose of prehospital training of paramedic students when in the presence of a preceptor or preceptors approved by the commission in accordance with the following procedures:**

(1) The provisional certification may be issued to the following:

(A) To an ambulance service provider certified pursuant to IC 16-31 only. ~~or~~

(B) To an advanced emergency medical technician organization certified pursuant to IC 16-31. ~~for the purpose of prehospital training of paramedic students when in the presence of a preceptor or preceptors approved by the commission,~~

(2) The provisional certification may be issued when the following are met:

(A) Upon demonstration by the applicant to the satisfaction of the director, ~~that~~ the ambulance to be used for such training is certified pursuant to IC 16-31. ~~and~~

(B) The ambulance meets the requirements of subsection (f) and section 3 of this rule. ~~and that~~

(C) The ambulance service provider or advanced emergency medical technician organization has and shall maintain an adequate number of paramedic students, preceptors, and ambulances to provide continuous twenty-four (24) hour advanced life support service.

(3) A fully completed application for provisional certification shall be made on such forms as prescribed by the commission. ~~which shall be fully completed.~~

(4) The director may issue a provisional certificate for a period not to exceed sixty (60) days beyond the date of the paramedic course completion as identified on the approved course application. However, the director shall not issue a provisional certificate for a period exceeding twenty-four (24) consecutive months from the starting date of the course as identified on the approved course application.

(5) The issuance of a temporary or full certification invalidates any provisional certification.

~~(q)~~ **(m)** The paramedic organization shall, with medical director and chief executive officer approval, allow a graduate of an Indiana approved paramedic course to perform advanced life support under the direction of a preceptor. This person shall be actively pursuing certification as an Indiana certified paramedic. This provision shall be limited from one (1) year from date of course completion as indicated on course report.

~~(r)~~ **(n)** Provide for a periodic maintenance program to assure that emergency response vehicles, including equipment, are maintained in good working condition and that strict sanitation procedures are in effect at all times.

~~(s)~~ **(o)** Paramedic organization premises, records, parking, or garaging facilities and response vehicles shall be available for inspection by the director, or the director's duly authorized representative, at any time during operating hours.

~~(t)~~ **(p)** Each paramedic organization shall have in force and effect public liability insurance in the sum as described in 836 IAC ~~1-2-3(g)~~ **836 IAC 1-3-6** pursuant to IC 16-31. Such proof of insurance shall be made on a form prescribed by the commission.

~~(u) Each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run need only to be staffed, as a minimum, by a certified paramedic.~~ *(Indiana Emergency Medical Services Commission; Advanced Life Support Rule I, A; filed Jan 21, 1977, 11:30 a.m.: Rules and Regs. 1978, p. 200; filed Dec 15, 1977: Rules and Regs. 1978, p. 250; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2216; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2434; errata, 5 IR 400; filed Dec 2, 1983, 2:43 p.m.: 7 IR 364; errata, 7 IR 1254; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1062; filed Aug 18, 1986, 1:00 p.m.: 10 IR 41; filed Oct 11, 1988, 11:05 a.m.: 12 IR 358; filed May 15, 1998, 10:25 a.m.: 21 IR 3892; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2733; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2512; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2348)*

SECTION 14. 836 IAC 2-7.1-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 2-7.1-1 Advanced emergency medical technician organizations; general requirements

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 1. (a) The advanced emergency medical technician provider organization certification provides authority to perform skills set forth and approved by the commission for which certification is granted. The medical director may limit the skills according to local protocols.

(b) Certification by the commission is required for any ambulance service provider who seeks to provide advanced life support services as an advanced emergency medical technician organization unless provisional certification is issued pursuant to subsection ~~(o).~~ **(k).**

(c) If the advanced emergency medical technician organiza-

tion also provides transportation of emergency patients, the advanced emergency medical technician organization shall be certified as an ambulance service provider in accordance with the requirements specified in 836 IAC 1. The advanced emergency medical technician nontransport organization shall meet the requirements specified in 836 IAC 1-2-2(a), and 836 IAC 1-11-3(o) through 836 IAC 1-11-3(q).

(d) The advanced emergency medical technician organization shall ensure that:

(1) the ambulances used are certified and meet the requirements specified in 836 IAC 1-3; and

(2) all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements required in 836 IAC 2-14.

(e) The advanced emergency medical technician organization shall have agreed by contract or interdepartmental memo if it is a hospital based organization with one (1) or more supervising hospitals for the following services:

(1) Continuing education.

(2) Audit and review.

(3) Medical control and direction.

(4) Liaison and direction for supply of intravenous fluids and other items utilized by advanced emergency medical technicians.

(5) Provision to allow the advanced emergency medical technicians affiliated with the supervised advanced emergency medical technician organization to function within appropriate hospital departments in order to obtain continuing practice in their clinical skills.

The contract shall include a detailed description of how such services shall be provided to the advanced emergency technician organization. In those cases where more than one (1) hospital contracts, or seeks to contract with, an advanced emergency medical technician organization as a supervising hospital, an interhospital agreement shall be provided to the commission that shall clearly define the specific duties and responsibilities of each hospital to ensure medical and administrative accountability of system operation.

(f) The advanced emergency medical technician organization shall have a medical director provided by the advanced emergency medical technician organization, or jointly with the supervising hospital, who is a physician who holds a currently valid unlimited license to practice medicine in Indiana and has an active role in the delivery of emergency care. The medical director is responsible for providing competent medical direction as established by the medical control committee and overall supervision of the medical aspect of the advanced emergency medical technician organization. Upon establishment of a medical control policy, the advanced emergency medical technician organization medical director and the chief executive officer have the duty to enact the policy within the advanced emergency medical technician organization and accordingly enforce the policy. The duties and responsibilities of the medical director include, but are not limited to, the following:

(1) Providing liaison with physicians.

(2) Assuring that appropriate intravenous solutions, supplies, and equipment are available to the advanced emergency medical technician organization.

(3) Monitor and evaluate day-to-day medical operation.

(4) Assist the supervising hospital in the coordination of in-service training programs.

(5) Provide information concerning the operation of the advanced emergency medical technician organization.

(6) Provide individual consultation to advanced emergency medical technicians.

(7) Assure continued competence of advanced emergency medical technicians affiliated with, or employed by, the advanced emergency medical technician organization.

(8) Participate in the quarterly audit and review of cases treated by advanced emergency medical technicians of the provider organization.

(9) Establish protocols for advanced life support.

(10) Establish and publish a list of intravenous fluids and administration supplies, including minimum quantities to be carried on the vehicle.

(g) Each advanced emergency medical technician organization shall **notify the commission in writing within thirty (30) days:**

~~(1) maintain an adequate number of trained personnel and emergency response vehicles to provide continuous twenty-four (24) hour advanced life support services;~~

~~(2) notify the commission in writing within thirty (30) days~~ **(1)** of assigning any individual to perform the duties and responsibilities required of an advanced emergency medical technician, and this notification shall be signed by the provider organization and medical director of the provider organization; and

~~(3) notify the commission in writing within thirty (30) days~~ **(2)** if an advanced emergency medical technician:

(A) terminates employment;

(B) terminates affiliation; or

(C) for any reason is prohibited from performing the procedures for which certification was granted.

(h) When advanced life support services administered by advanced emergency medical technicians at the scene of an accident or illness are continued en route to an emergency facility, as a minimum, the patient compartment of the ambulance shall be staffed by not less than one (1) person certified as an advanced emergency medical technician.

(i) The advanced emergency medical technician organization shall notify the commission in writing within thirty (30) days of any change in the advanced life support services provided for which certification was granted.

(j) No certification is required for the following:

(1) A person who provides advanced life support while assisting in the case of a major catastrophe disaster whereby persons who are certified to provide emergency medical services or advanced life support are insufficient or are unable to cope with the situation.

(2) An agency or instrumentality of the United States and any advanced emergency medical technicians of such agency or instrumentality are not required to be certified nor to conform to the standards prescribed in this article unless the agency or instrumentality seeks to provide service to citizens of Indiana off of the federal area.

~~(k) After proper notice and hearing, the commission may:~~
~~(1) levy penalties up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 and 836 IAC 2-13-1; or~~
~~(2) suspend or revoke a certificate issued under this article for:~~
~~(A) fraud or misrepresentation in procuring certification;~~
~~(B) failure to comply and maintain compliance with; or~~
~~(C) violation of any applicable provisions, standards, or other requirements of this article.~~

~~(l) The commission may initiate proceedings to suspend or revoke a certificate upon its own motion or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.~~

~~(m) Notwithstanding the provisions of this article, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.~~

~~(n) Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease.~~

~~(o)~~ **(k)** The director may issue a provisional certification for the provision of advanced life support as an advanced emergency medical technician organization **for the purpose of prehospital training of advanced emergency medical technician students when in the presence of a preceptor approved by the commission in accordance with the following procedures:**

(1) The provisional certification may be issued to an ambulance service provider certified pursuant to IC 16-31. ~~for the purpose of prehospital training of advanced emergency medical technician students when in the presence of a preceptor approved by the commission~~

(2) The provisional certification may be issued when the following are met:

(A) Upon demonstration by the applicant to the satisfaction of the director, ~~that:~~ ~~(1)~~ the ambulance to be used for such training is certified pursuant to IC 16-31 and meets the requirements of this article. ~~and~~

~~(2)~~ **(B)** The ambulance service provider has and will maintain an adequate number of advanced emergency medical technician students, preceptors, and ambulances to provide continuous twenty-four (24) hour advanced life support service.

(3) A fully completed application for provisional certification shall be made on forms as prescribed by the commission. ~~which shall be fully completed.~~

(4) The director may issue a provisional certificate for a period not to exceed sixty (60) days beyond the date the advanced emergency medical technician course completion as identified on the approved course application. However, the director shall not issue a provisional certificate for a period exceeding six (6) consecutive months from the starting date of the course as identified on the approved course application.

(5) The issuance of certification invalidates any provisional certification.

~~(p)~~ **(l)** Provide for a periodic maintenance program to assure that:

(1) emergency response vehicles, including equipment, are maintained in good working condition; and

(2) applicable sanitation procedures are in effect at all times.

~~(q)~~ **(m)** Advanced emergency medical technician organization premises, records, parking, or garaging facilities and response vehicles shall be available for inspection by the director, or the director's duly authorized representative, at any time during operating hours.

~~(r)~~ **(n)** Each advanced emergency medical technician organization shall have in force and effect public liability insurance in the sum as described in ~~836 IAC 1-2-3(g)~~ **836 IAC 1-3-6** pursuant to IC 16-31. Such proof of insurance shall be made on a form prescribed by the commission.

~~(s)~~ **(o)** The advanced emergency medical technician organization shall maintain a communications system that shall be available twenty-four (24) hours a day between the advanced emergency medical technician organization and the emergency department, or equivalent, of the supervising hospital using voice communications. The communications system shall be licensed by the Federal Communications Commission.

~~(t)~~ **(p)** Each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run need only to be staffed, as a minimum, by a certified advanced emergency medical technician. *(Indiana Emergency Medical Services Commission; 836 IAC 2-7.1-1; filed Apr 6, 1988, 9:55 a.m.: 11 IR 2875; filed May 15, 1998, 10:25 a.m.: 21 IR 3904; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2738; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2515; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2350)*

SECTION 15. 836 IAC 2-7.2 IS ADDED TO READ AS FOLLOWS:

Rule 7.2. Requirements and Standards for Advanced Emergency Medical Technician Intermediate Organizations

836 IAC 2-7.2-1 General requirements for advanced emergency medical technician intermediate organizations

Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3

Sec. 1. (a) Certification by the commission is required for any ambulance service provider who seeks to provide advanced life support services as an advanced emergency medical technician intermediate organization unless provisional certification is issued pursuant to subsection (p).

(b) If the advanced emergency medical technician intermediate organization also provides transportation of emergency patients, the advanced emergency medical technician intermediate organization shall be certified as an ambulance service provider in accordance with the requirements specified in 836 IAC 1 pursuant to IC 16-31. The advanced emergency medical technician intermediate nontransport organizations shall meet the requirements specified in 836 IAC 1-2-2(a) and 836 IAC 1-11-3(o) through 836 IAC 1-11-3(q).

(c) The advanced emergency medical technician intermediate organization shall ensure that:

(1) ambulances used are certified and meet the requirements specified in 836 IAC 1-3; and

(2) all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements in 836 IAC 2-14.

(d) Advanced emergency medical technician intermediate organizations shall have a contract, or interdepartmental memo if hospital based, with one (1) or more supervising hospitals for the following services:

(1) Continuing education.

(2) Audit and review.

(3) Medical control and direction.

(4) Provision of arrangements and the supervision of arrangements for the supply of medications and other items utilized by emergency medical service clinical personnel in the provision of advanced life support service.

(5) Provision to allow the advanced emergency medical technician intermediates affiliated with the supervised advanced emergency medical technician intermediate organization to function within the appropriate hospital department in order to obtain continuing practice in their clinical skills.

The contract or interdepartmental memo shall include a detailed description of how such services shall be provided to the advanced emergency medical technician intermediate organization. In those cases where more than one (1) hospital contracts, or seeks to contract, with an advanced emergency medical technician intermediate provider organization as a supervising hospital, an interhospital agreement shall be provided to the commission that shall clearly define the specific duties and responsibilities of each hospital to ensure medical and administrative accountability of system operation.

(e) The advanced emergency medical technician intermediate organization shall have a medical director provided by the advanced emergency medical technician intermediate organization, or jointly with the supervising hospital, who shall be a physician who holds a currently valid unlimited license to practice medicine in Indiana and has an active role in the delivery of emergency care. The medical director is responsible for providing competent medical direction as established by the medical control committee. Upon establishment of a medical control policy, the advanced emergency medical technician intermediate organization medical director and the chief executive officer have the duty to enact the policy within the advanced emergency medical technician intermediate organization and accordingly enforce the policy. The duties and responsibilities of the medical director include, but are not limited to, the following:

(1) Provide liaison with physicians and the medical community.

(2) Assure that the drugs, medications, supplies, and equipment are available to the advanced emergency medical technician intermediate organization.

(3) Monitor and evaluate day-to-day medical operations of advanced emergency medical technician intermediate organizations.

(4) Assist in the provision and coordination of continuing education.

(5) Provide information concerning the operation of the advanced emergency medical technician intermediate organization.

(6) Provide individual consultation to advanced emergency medical technician intermediates.

(7) Participate in at least quarterly audit and review of cases treated by advanced emergency medical technician intermediates of the supervising hospital.

(8) Attest to the competency of advanced emergency medical technician intermediates affiliated with the advanced emergency medical technician intermediate organization to perform skills required of an advanced emergency medical technician intermediate under 836 IAC 4-7.1.

(9) Establish protocols for advanced life support.

(10) Establish and publish a list of medications, including

minimum quantities and dosages to be carried on the vehicle.

(f) The advanced emergency medical technician intermediate organization shall maintain a communications system that shall be available twenty-four (24) hours a day between the advanced emergency medical technician intermediate organization and the emergency department, or equivalent, of the supervising hospital using UHF (ultra high frequency) voice communications. The communications system shall be licensed by the Federal Communications Commission.

(g) Each advanced emergency medical technician intermediate organization shall do the following:

(1) Maintain an adequate number of trained personnel and emergency response vehicles to provide continuous, twenty-four (24) hour advanced life support services.

(2) Notify the commission in writing within thirty (30) days of assigning any individual to perform the duties and responsibilities required of an advanced emergency medical technician intermediate. This notification shall be signed by the provider organization and medical director of the provider organization.

(3) Notify the commission in writing within thirty (30) days of an advanced emergency medical technician intermediate's termination of employment or for any reason that prohibits a certified individual from performing the procedures required of an advanced emergency medical technician intermediate.

(h) An advanced emergency medical technician intermediate organization ambulance service provider must be able to provide an advanced life support response. For the purpose of this subsection, an "advanced life support response" consists of the following:

(1) An advance emergency medical technician intermediate.

(2) An emergency medical technician.

(3) An ambulance in compliance with the requirements of 836 IAC 2-7.2-3(f) *[section 3(f) of this rule]***.**

(4) During transport of the patient, if advanced life support treatment techniques have been initiated or are needed, at least one (1) advanced emergency medical technician intermediate shall be in the patient compartment of the ambulance. If advanced life support treatment techniques have not been initiated and are not needed, at least one (1) individual certified as an emergency medical technician or higher shall be in the patient compartment of the ambulance during transport of the patient.

(i) For an advanced emergency medical technician intermediate organization, when an advanced life support nontransport vehicle is dispatched, it shall at a minimum be staffed by an advanced emergency medical technician intermediate.

(j) The advanced emergency medical technician intermediate organization shall notify the commission in writing within thirty (30) days of any change in the services provided.

(k) No certification is required for the following:

(1) A person who provides advanced life support while assisting in the case of a major catastrophe or disaster, whereby persons who are certified to provide emergency medical services or advanced life support are insufficient or are unable to cope with the situation.

(2) An agency or instrumentality of the United States and any advanced emergency medical technician intermediate of such agency or instrumentality is not required to be certified nor to conform to the standards prescribed in this article.

(3) Rendering assistance to persons certified to provide emergency ambulance service or to advanced emergency medical technician intermediates.

(4) Operating from a location or headquarters outside Indiana to provide emergency ambulance services to patients who are picked up outside Indiana for transportation to location within Indiana.

(l) The director may issue a provisional certification for the provision of advanced life support as an advanced emergency medical technician intermediate organization for the purpose of prehospital training of advanced emergency medical technician intermediate students when in the presence of a preceptor or preceptors approved by the commission in accordance with the following procedures:

(1) The provisional certification may be issued to either of the following:

(A) An ambulance service provider certified pursuant to IC 16-31 only.

(B) An advanced emergency medical technician organization certified pursuant to IC 16-31.

(2) The provisional certification may be issued when the following are met:

(A) Upon demonstration by the applicant to the satisfaction of the director, the ambulance to be used for such training is certified pursuant to IC 16-31.

(B) The ambulance meets the requirements of subsection (f) and section 3 of this rule.

(C) The ambulance service provider or advanced emergency medical technician organization has and shall maintain an adequate number of advanced emergency medical technician intermediate students, preceptors, and ambulances to provide continuous twenty-four (24) hour advanced life support service.

(3) A fully completed application for provisional certification shall be made on such forms as prescribed by the commission.

(4) The director may issue a provisional certificate for a

period not to exceed sixty (60) days beyond the date of the advanced emergency medical technician intermediate course completion as identified on the approved course application. However, the director shall not issue a provisional certificate for a period exceeding twenty-four (24) consecutive months from the starting date of the course as identified on the approved course application.
(5) The issuance of a temporary or full certification invalidates any provisional certification.

(m) The advanced emergency medical technician intermediate organization shall, with medical director and chief executive officer approval, allow a graduate of an Indiana approved advanced emergency medical technician intermediate course to perform advanced life support under the direction of a preceptor. This person shall be actively pursuing certification as an Indiana certified advanced emergency medical technician intermediate. This provision shall be limited from one (1) year from date of course completion as indicated on course report.

(n) Provide for a periodic maintenance program to assure that emergency response vehicles, including equipment, are maintained in good working condition and that strict sanitation procedures are in effect at all times.

(o) Advanced emergency medical technician intermediate organization premises, records, parking, or garaging facilities and response vehicles shall be available for inspection by the director, or the director's duly authorized representative, at any time during operating hours.

(p) Each advanced emergency medical technician intermediate organization shall have in force and effect public liability insurance in the sum as described in 836 IAC 1-3-6 pursuant to IC 16-31. Such proof of insurance shall be made on a form prescribed by the commission. *(Indiana Emergency Medical Services Commission; 836 IAC 2-7.2-1; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2353)*

836 IAC 2-7.2-2 Application for certification; renewal
Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 2. (a) Application for certification as an advanced emergency medical technician intermediate organization shall be made on forms prescribed by the commission and shall include, but not be limited to, the following:
(1) A narrative summary of plans for providing advanced life support services, including the following:
(A) Defined primary area of response, including location of advanced life support response vehicles.
(B) A listing of advanced emergency medical technician intermediates to be affiliated by the advanced emergency medical technician intermediate organization.
(C) The staffing pattern of personnel.
(D) Base of operations.
(2) Plans and methodologies to ensure that the trained personnel are provided with supervised continuing education to maintain proficiency. Continuing education is under the direct supervision of the advanced emergency medical technician intermediate organization medical director with the cooperation of the supervising hospital.
(3) A listing of medications and special on-board life support equipment, to be carried on board each vehicle as approved by the medical director.
(4) All scheduled medications shall be stored in a locked container within a locked compartment. Medications storage shall be approved in writing by medical director or issuing pharmacy.
(5) Letter of approval from the supervising hospital stating acceptance of the advanced emergency medical technician intermediates, compatibility of the UHF communications with the advanced emergency medical technician intermediate organization's vehicles, and agreement to fulfill the responsibilities of the supervising hospital.

(b) Advanced emergency medical technician intermediate organizations that do not also provide transportation of emergency patients shall submit a copy of a current written agreement between the nontransporting advanced emergency medical technician intermediate organization and an ambulance service provider certified pursuant to IC 16-31. The agreement shall ensure that the nontransporting advanced emergency medical technician intermediate provider can be assured that patients treated shall be transported in a timely and safe manner. The agreement shall not preclude another ambulance service provider, if available, from transporting the patients.

(c) Upon approval, an advanced emergency medical technician intermediate organization shall be issued certification for the provisions of advanced life support certification. The certificate issued is valid for a period of two (2) years and shall be prominently displayed at the place of business.

(d) Application for advanced emergency medical technician intermediate organization certification renewal should be made not less than sixty (60) days prior to the expiration date of the current certification. Application for renewal shall be made on forms prescribed by the commission and shall show evidence of compliance with the requirements as set forth for original certification.

(e) Upon approval, a certificate shall be issued by the director to the advanced emergency medical technician intermediate organization for each vehicle. The certificate

shall be valid for two (2) years unless earlier revoked or suspended by the commission. The vehicle certificate shall be prominently displayed within the vehicle. *(Indiana Emergency Medical Services Commission; 836 IAC 2-7.2-2; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2355)*

836 IAC 2-7.2-3 Advanced emergency medical technician intermediate organization operating procedures

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 3. (a) Each advanced emergency medical technician intermediate organization shall comply with the ambulance service provider operating procedures of 836 IAC 1-2-3.

(b) Each advanced emergency medical technician intermediate organization shall establish daily equipment checklist procedures to ensure the following:

(1) Electronic and mechanical equipment are in proper operating condition.

(2) Emergency response vehicles are maintained in a safe operating condition at all times.

(3) All required medications and intravenous fluids approved by the medical director of the advanced emergency medical technician intermediate organization and the supervising hospital are on-board all nontransport emergency medical services vehicles and ambulances when used for the provision of advanced life support and available to the advanced emergency medical technician intermediate.

(c) A copy of the medication list and protocols shall be maintained by the advanced emergency medical technician intermediate organization and the supervising hospital emergency department. Any changes to the medications list shall be forwarded to the commission within thirty (30) days.

(d) All medications and advanced life support supplies are to be supplied by order of the medical director. Accountability for distribution, storage, ownership, and security of medications is subject to applicable requirements as determined by the Indiana board of pharmacy and the Drug Enforcement Administration.

(e) The advanced emergency medical technician intermediate organization shall ensure that stocking and administration of supplies and medications are limited to the Indiana advanced emergency medical technician intermediate curriculum. Procedures performed by the advanced emergency medical technician intermediate are also limited to the Indiana advanced emergency medical technician intermediate curriculum.

(f) The advanced emergency medical technician intermediate organization shall ensure that all ambulances used for the provision of advanced life support contain the emergency care equipment required in 836 IAC 1-3-5, the rescue equipment required in 836 IAC 1-3-4, and communication equipment required in 836 IAC 1-4-2. The advanced life support emergency medical services vehicles shall also carry the following equipment:

(1) Portable defibrillator with self-contained cardiac monitor and ECG strip writer and equipped with defibrillation pads or paddles appropriate for both adult and pediatric defibrillation. This may be the defibrillator listed in 836 IAC 1-3-5(1)(L).

(2) Tracheal suction catheters (adult #14 and #18, child #10).

(3) Endotracheal intubation devices, including the following:

(A) Laryngoscope with extra batteries and bulbs.

(B) Laryngoscope blades (adult and pediatric, curved and straight).

(C) Disposable endotracheal tubes, a minimum of two (2) each, sterile packaged, in sizes 3, 4, 5, 6, 7, 8, and 9 millimeters inside diameter.

(4) Crystalliod intravenous fluids and administration supplies approved by the medical director.

(5) Medications limited to, if approved by the medical director, the following:

(A) Acetylsalicylic acid (aspirin).

(B) Adenosine.

(C) Atropine sulfate.

(D) Bronchodilator (beta 2 agonists):

(i) suggested commonly administered medications:

(AA) albuterol;

(BB) ipratropium;

(CC) isoetharine;

(DD) metaproterenol;

(EE) salmeterol;

(FF) terbutaline; and

(GG) triamcinolone; and

(ii) commonly administered adjunctive medications to bronchodilator therapy:

(AA) dexamethasone; and

(BB) methylprednisolone.

(E) Dextrose, fifty percent (50%).

(F) Diazepam.

(G) Epinephrine (1:1,000).

(H) Epinephrine (1:10,000).

(I) Vasopressin.

(J) Furosemide.

(K) Lidocaine hydrochloride, two percent (2%).

(L) Amiodarone hydrochloride.

(M) Morphine sulfate.

(N) Naloxone.

(O) Nitroglycerin.

(6) A current copy of advanced life support protocols

shall be maintained on board the emergency medical services vehicle at all times.

(7) A copy of the medication list, including quantities and concentrations approved by the medical director.

(g) The advanced emergency medical technician intermediate organization shall ensure that all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements in 836 IAC 2-14.

(h) Each advanced emergency medical technician intermediate organization shall ensure that rigid sanitation procedures are in effect at all times. The following sanitation standards apply to all vehicles used for the purpose of providing advanced life support services:

(1) The interior and the equipment within the vehicle shall be clean and maintained in good working order at all times.

(2) Freshly laundered linen or disposable linens shall be used on litters and pillows, and linen changed after each patient is transported.

(3) Clean linen storage shall be provided.

(4) Closed compartments shall be provided within the vehicle for medical supplies.

(5) Closed containers shall be provided for soiled supplies.

(6) Blankets shall be kept clean and stored in closed compartments.

(7) Single service implements inserted into the patient's nose or mouth shall be wrapped and properly stored and handled. Multi-use items are to be kept clean and sterile when indicated and properly stored.

(8) When a vehicle has been utilized to transport a patient known to have a communicable disease, the vehicle shall be cleansed and all contact surfaces washed with soap and water and disinfected.

(9) All scheduled medications shall be stored in a locked container within a locked compartment. Medications storage shall be approved in writing by medical director or issuing pharmacy.

(i) An advanced emergency medical technician intermediate organization shall not operate an ambulance or other vehicle used for the provision of advanced life support unless the ambulance or vehicle is in full compliance with this article unless the vehicle is a nontransport emergency medical services vehicle returning from the site of the provision of advanced life support by the equipment, supplies, and personnel previously on board the nontransport emergency medical services vehicle, nor shall an advanced emergency medical technician intermediate organization transport any emergency patient or patient receiving advanced life support in any vehicle except an ambulance certified pursuant to IC 16-31.

(j) Provisions for temporary vehicle certification are addressed in 836 IAC 1-2-3.

(k) Advanced emergency medical technician intermediates are prohibited from having in their possession, or maintained on board emergency response vehicles, any advanced life support equipment or supplies that have not been approved by advanced emergency medical technician intermediate organization medical director. *(Indiana Emergency Medical Services Commission; 836 IAC 2-7.2-3; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2356)*

SECTION 16. 836 IAC 2-14-5 IS AMENDED TO READ AS FOLLOWS:

836 IAC 2-14-5 Advanced life support nontransport vehicle emergency care equipment

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 5. Each advanced life support nontransport vehicle shall wrap, properly store, and handle all the single service implements inserted into the patient's nose or mouth. Multi-use items are to be kept clean and sterile when indicated and properly stored. The vehicle shall carry the following assembled and readily accessible minimum equipment:

(1) Respiratory and resuscitation equipment as follows:

(A) Portable suction apparatus, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.

(B) Bag-mask ventilation units, hand operated, one (1) unit in each of the following sizes, each equipped with clear face masks and oxygen reservoirs with oxygen tubing:

(i) Adult.

(ii) Child.

(iii) Infant.

(iv) Neonatal (mask only).

(C) Oropharyngeal airways, two (2) each of adult, child, and infant.

(D) One (1) pocket mask with one-way valve.

(E) Portable oxygen equipment of at least three hundred (300) liters capacity (D size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.

(F) Oxygen delivery devices shall include the following:

(i) High concentration devices, two (2) each, adult, child, and infant.

(ii) Low concentration devices, two (2) each, adult.

(G) Nasopharyngeal airways, two (2) each of the following with water soluble lubricant:

(i) Small (20-24 french).

(ii) Medium (26-30 french).

(iii) Large (31 french or greater).

(H) Bulb syringe individually packaged in addition to obstetrics kit.

(I) Nonvisualized airway minimum of two (2) with water soluble lubricant.

(J) Portable defibrillator with self-contained cardiac monitor and ECG strip writer and equipped with defibrillation pads or paddles appropriate for adult defibrillation.

(2) Wound care supplies as follows:

~~(A) Multiple trauma dressings, two (2) approximately ten (10) inches by thirty-six (36) inches.~~

~~(B) Fifty (50) sterile gauze pads, three (3) inches by three (3) inches or larger.~~

~~(C) Bandages, four (4) soft roller self-adhering type, two (2) inches by four (4) yards minimum.~~

~~(D)~~ **(A)** Airtight dressings, four (4), for open chest wounds.

~~(E) Adhesive tape, two (2) rolls.~~

~~(F) Burn sheets, two (2), sterile.~~

~~(G) Triangular bandages, four (4).~~

~~(H) Bandage shears, one (1) pair.~~

(B) Assorted bandaging supplies for the care of soft tissue injuries.

(3) Patient stabilization equipment as follows:

~~(A) Traction splint, lower extremity, limb-supports, padded ankle hitch, and traction strap, or equivalent, one (1) assembly in adult size.~~

~~(B)~~ **(A)** Upper and lower extremity splinting devices, two (2) each.

~~(C) One (1) splint device intended for the unit-immobilization of head-neck and torso. These items shall include the splint itself and all required accessories to provide secure immobilization.~~

~~(D) One (1) long back board with accessories to provide secure spinal immobilization.~~

~~(E)~~ **(B)** Rigid extrication collar, two (2) each capable of the following sizes:

(i) Pediatric.

(ii) Small.

(iii) Medium.

(iv) Large.

(4) Personal protection/universal precautions equipment, minimum of one (1) each, including the following:

(A) Gowns.

(B) Face masks and shields.

(C) Gloves.

(D) Biohazard bags.

(E) Antimicrobial hand cleaner.

(5) Miscellaneous items as follows:

(A) Obstetrical kit, sterile, one (1).

(B) Blood pressure manometer, one (1) each in the following cuff sizes:

(i) Large adult.

(ii) Adult.

(iii) Pediatric.

(C) Stethoscopes, one (1) each in the following sizes:

(i) Adult.

(ii) Pediatric.

(D) Sharps collector, one (1) being a minimum of seven (7) inches in height.

(E) Intravenous fluids, medication, and administration supplies approved by the medical director.

(F) A current copy of advanced life support protocols shall be maintained on board the advanced life support nontransport vehicle at all times.

(G) A copy of the medication list, including quantities and concentrations approved by the medical director.

(6) Medications if approved by medical director, and solely for use by individuals with a certification as an emergency medical technician or higher, are as follows:

(A) Baby aspirin, eighty-one (81) milligrams each.

(B) Activated charcoal.

(C) Instant glucose.

(D) Epinephrine auto-injector(s).

~~(6)~~ **(7)** Paramedic services shall also carry the following equipment:

(A) Tracheal suction catheters (adult #14 and #18, child #10).

(B) Endotracheal intubation devices, including the following:

(i) Laryngoscope with extra batteries and bulbs.

(ii) Laryngoscope blades (adult and pediatric, curved and straight).

(iii) Disposable endotracheal tubes, a minimum of two (2) each, sterile packaged, in sizes 3, 4, 5, 6, 7, 8, and 9 millimeters inside diameter.

(C) Defibrillation pads or paddles appropriate for pediatric defibrillation.

(Indiana Emergency Medical Services Commission; 836 IAC 2-14-5; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2744; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2357)

SECTION 17. 836 IAC 3-2-4 IS AMENDED TO READ AS FOLLOWS:

836 IAC 3-2-4 Operating procedures; flight and medical

Authority: IC 16-31-2-7; IC 16-31-3-20
Affected: IC 4-21.5-1

Sec. 4. (a) Each organization shall maintain accurate records concerning the emergency care provided to each patient within the state as well as the following:

(1) All advanced life support rotorcraft ambulance service providers shall utilize a patient care transport record.

(2) All advanced life support rotorcraft ambulance service providers shall participate in the emergency medical service system review by:

(A) collecting all data elements prescribed by the commission; and

(B) reporting that information according to the procedure and schedules prescribed by the commission.

(b) Premises will be maintained, suitable to the conduct of a rotorcraft ambulance service, with provision for adequate storage and/or maintenance of rotorcraft ambulances and the on-board equipment.

(c) Each rotorcraft ambulance service provider shall have a periodic maintenance program as outlined for each specific aircraft certified by the commission in compliance with F.A.A. guidelines and manufacturer's service recommendations (MSR) as a minimum to assure that each rotorcraft ambulance, including equipment, is maintained in good, safe working condition and that rigid sanitation conditions and procedures are in effect at all times.

(d) All rotorcraft ambulance service provider premises, records, hangars, padding, and tie-down facilities, and rotorcraft ambulances will be made available for inspection by the director or the director's authorized representative at any time during regularly scheduled business hours.

(e) A determination of noncompliance with F.A.R. may result in immediate suspension of commission certification as a rotorcraft ambulance service provider.

(f) Each rotorcraft ambulance service provider shall make available to the commission for inspection at place of operation during regular business hours any manual of operations required under F.A.R.

(g) Commission certification as a rotorcraft ambulance service provider may be terminated upon the date specified in the notice.

(h) Each rotorcraft ambulance service provider shall establish equipment checklist procedures to ensure the following:

(1) Electronic and mechanical equipment are in proper operating condition.

(2) Rotorcraft ambulances shall be maintained in safe operating conditions at all times.

(3) Emergency patient care equipment required for rotorcraft ambulance certification is maintained in minimum quantities either directly on board the rotorcraft ambulance or available at the time of patient transport.

(i) Each rotorcraft ambulance service provider shall ensure that rigid sanitation conditions and procedures are in effect at all times. The following sanitation standards apply to all rotorcraft ambulances:

(1) The interior and the equipment within the aircraft are clean and maintained in good working order at all times.

(2) Freshly laundered linens are used on all litters, and pillows and linens shall be changed after each patient is transported.

(3) When the aircraft has been utilized to transport a patient known to have a communicable disease, the aircraft shall be cleansed and all contact surfaces be disinfected.

(j) A rotorcraft ambulance service provider shall not operate a rotorcraft ambulance in Indiana if the aircraft does not meet the certification requirements of this article and does not have a certificate issued pursuant to this article; however, a rotorcraft ambulance service provider may operate, for a period not to exceed one hundred eighty (180) consecutive days, a noncertified rotorcraft ambulance if the noncertified rotorcraft ambulance is used to replace a certified rotorcraft ambulance that has been temporarily taken out of service providing the following:

(1) The replacement rotorcraft ambulance meets all certification requirements of this article.

(2) The rotorcraft ambulance service provider shall notify the commission, in writing, within seventy-two (72) hours of the time the replacement rotorcraft is placed in service. The written notice shall identify the following:

(A) The replacement date.

(B) The certification number of the replaced rotorcraft ambulance.

(C) The aircraft identification number of the replacement rotorcraft.

(D) The make and type of the replacement rotorcraft ambulance.

Upon receipt of the notification, a temporary certificate shall be issued effective the date the certified rotorcraft ambulance was replaced. Temporary certification will not exceed one hundred eighty (180) days, and, upon return to service, the use of the replacement rotorcraft ambulance shall cease. If the replaced rotorcraft ambulance is not returned to service within the one hundred eighty (180) day period, use of the replacement rotorcraft ambulance shall cease unless certification is approved in accordance with this article.

~~(k) After proper notice and hearing, the commission may suspend or revoke a rotorcraft ambulance service provider certificate issued under this article and/or impose a penalty of up to five hundred dollars ($500) in accordance with 836 IAC 1 and 836 IAC 2 for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1, 836 IAC 2, or this article pursuant to IC 4-21.5-1.~~

~~(l) The commission may initiate proceedings to suspend or revoke a rotorcraft ambulance service provider certificate upon its own motion, or on the verified written complaint of any interested person. All such proceedings shall be held and conducted in accordance with the provisions of IC 4-21.5-1.~~

~~(m) Notwithstanding this section, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a rotorcraft ambulance service provider certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder. Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.~~

~~(n) A rotorcraft ambulance service provider organization owner or lessee seeking certification of a rotorcraft ambulance may petition the commission for exemption from one (1) or~~

~~more of the specifications or requirements listed in this article. The commission may approve one (1) or more of the requested exemptions and grant certification. However, the commission may restrict any exemption or exemptions approved under this article. Exemptions requested will not be approved if, in the opinion of the commission, the exemption or exemptions would impair the capabilities of the rotorcraft ambulance service provider to provide proper emergency patient care.~~ *(Indiana Emergency Medical Services Commission; 836 IAC 3-2-4; filed Oct 11, 1988, 11:05 a.m.: 12 IR 370; filed May 15, 1998, 10:25 a.m.: 21 IR 3920; filed Apr 4, 2002, 9:08 a.m.: 25 IR 2494; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2358)*

SECTION 18. 836 IAC 3-2-5 IS AMENDED TO READ AS FOLLOWS:

836 IAC 3-2-5 Staffing
Authority: IC 16-31-2-7; IC 16-31-3-20
Affected: IC 4-21.5-1

Sec. 5. (a) Each certified rotorcraft ambulance, while transporting an emergency patient, will be staffed by no less than three (3) people that have completed air-medical oriented training as prescribed by the air-medical director. Staffing will include the following requirements:

(1) The first person shall be a properly certified pilot who shall complete an orientation program covering flight and air-medical operations as prescribed by the air-medical director.

(2) The second person shall be currently certified, registered, or licensed **in Indiana** as one (1) of the following:

(A) a paramedic;

(B) a registered nurse; or

(C) a physician with a valid unlimited license to practice medicine;

within the state the air-ambulance is stationed and operating.

(3) The third person shall be any appropriate personnel required to properly care for the medical needs of the patient at the discretion of the air-medical director. The air-medical personnel on board the aircraft shall be trained in air transport problems and flight physiology.

(b) The advanced life support rotorcraft ambulance service provider organization shall notify the commission in writing within thirty (30) days of any change in the advanced life support services provided.

~~(c) After proper notice and hearing, the commission may levy penalties up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 or 836 IAC 2-13-1 or suspend or revoke a certificate issued under 836 IAC 1, 836 IAC 2, and this article for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1, 836 IAC 2, and this article.~~

~~(d) The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings will be held in and conducted in accordance with the provisions of IC 4-21.5-1.~~

~~(e) Notwithstanding 836 IAC 1, 836 IAC 2, or this article, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without a hearing for a period not to exceed thirty (30) days upon notice to the certificate holder.~~

~~(f)~~ **(c)** Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease. *(Indiana Emergency Medical Services Commission; 836 IAC 3-2-5; filed Oct 11, 1988, 11:05 a.m.: 12 IR 372; filed May 15, 1998, 10:25 a.m.: 21 IR 3922; filed Apr 4, 2002, 9:08 a.m.: 25 IR 2496; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2360)*

SECTION 19. 836 IAC 3-3-4 IS AMENDED TO READ AS FOLLOWS:

836 IAC 3-3-4 Operating procedures; flight and medical
Authority: IC 16-31-2-7; IC 16-31-3-20
Affected: IC 4-21.5-1

Sec. 4. (a) Each organization shall maintain accurate records concerning the emergency care provided to each patient within the state as well as the following:

(1) All advanced life support fixed-wing ambulance service providers shall utilize a patient care transport record.

(2) All advanced life support fixed-wing ambulance providers shall participate in the emergency medical service system review by:

(A) collecting all data elements prescribed by the commission; and

(B) reporting that information according to the procedures and schedules prescribed by the commission.

(b) Premises shall be maintained, suitable to the conduct of a fixed-wing air ambulance service, with provision for adequate storage and/or maintenance of fixed-wing ambulances and the on-board equipment.

(c) Each fixed-wing air ambulance service provider shall have a periodic maintenance program as outlined for each specific aircraft certified by the commission in compliance with F.A.A. and manufacturer's service recommendations (MSR) guidelines as a minimum to assure that each fixed-wing ambulance, including equipment, is maintained in good, safe working condition.

(d) All fixed-wing air ambulance service provider premises, records, and fixed-wing ambulances shall be made available for inspection by the director or his authorized representative at any time during regularly scheduled business hours.

(e) A determination of noncompliance with F.A.R. may result

in immediate suspension of commission certification as a fixed-wing air ambulance service provider.

(f) Each fixed-wing air ambulance service provider shall make available to the commission for inspection at place of operation during regular business hours any manual of operations required under F.A.R.

(g) Commission certification as a fixed-wing air ambulance service provider may be terminated upon the date specified in the notice.

(h) Each fixed-wing air ambulance service provider shall establish equipment checklist procedures to ensure the following:

(1) Electronic and mechanical equipment are in proper operating condition.

(2) Fixed-wing ambulances shall be maintained in safe operating conditions at all times.

(3) Emergency patient care equipment required for fixed-wing ambulance certification is maintained in minimum quantities either directly on board the fixed-wing ambulance or available at the time of patient transport.

(i) Each fixed-wing air ambulance service provider shall ensure that rigid sanitation conditions and procedures are in effect at all times. The following sanitation standards apply to all fixed-wing ambulances:

(1) The interior and the equipment within the aircraft are clean and maintained in good working order at all times.

(2) Freshly laundered linens are used on all litters, and pillows and linens shall be changed after each patient is transported.

(3) When an aircraft has been utilized to transport a patient known to have a communicable disease, the aircraft shall be cleansed and all contact surfaces be washed with soap and water and disinfected.

(j) A fixed-wing air ambulance service provider shall not operate a fixed-wing ambulance in Indiana if the fixed-wing ambulance does not meet the certification requirements of this article and does not have a certificate issued pursuant to this article; however, a fixed-wing air ambulance service provider may operate, for a period not to exceed one hundred eighty (180) consecutive days, a temporary replacement fixed-wing ambulance if the temporary replacement fixed-wing ambulance is used to replace a certified fixed-wing ambulance that has been temporarily taken out of service providing the following:

(1) The replacement fixed-wing ambulance shall meet all certification requirements of this article.

(2) The fixed-wing air ambulance service provider shall notify the commission, in writing, within seventy-two (72) hours of the time the replacement fixed-wing ambulance is placed in service. The written notice shall identify the following:

(A) The replacement date.

(B) The certification number of the replaced fixed-wing ambulance.

(C) The aircraft identification number of the replacement fixed-wing ambulance.

(D) The make and type of the replacement fixed-wing ambulance.

Upon receipt of the notification, a temporary certificate shall be issued effective the date the certified rotorcraft ambulance was replaced. Temporary certification will not exceed one hundred eighty (180) days, and, upon return to service, the use of the replacement fixed-wing ambulance shall cease. If the replaced fixed-wing ambulance is not returned to service within the one hundred eighty (180) day period, use of the replacement fixed-wing ambulance shall cease unless certification is approved in accordance with this article.

~~(k) After proper notice and hearing, the commission may suspend or revoke a fixed-wing air ambulance service provider certificate issued under this article and/or impose a penalty of up to five hundred dollars ($500) in accordance with 836 IAC 1 and 836 IAC 2 for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1, 836 IAC 2, or this article pursuant to IC 4-21.5-1.~~

~~(l) The commission may initiate proceedings to suspend or revoke a fixed-wing air ambulance service provider certificate upon its own motion or on the verified written complaint of any interested person. All such proceedings shall be held and conducted in accordance with the provisions of IC 4-21.5-1.~~

~~(m) Notwithstanding this section, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a fixed-wing air ambulance service provider certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder. Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.~~

~~(n) A fixed-wing air ambulance service provider owner or lessee seeking certification of a fixed-wing ambulance may petition the commission for exemption from one (1) or more of the specifications or requirements listed in this article. The commission may approve one (1) or more of the requested exemptions and grant certification. However, the commission may restrict any exemption or exemptions approved under this article. Exemptions requested will not be approved if, in the opinion of the commission, the exemption or exemptions would impair the capabilities of the fixed-wing air ambulance service provider to provide proper patient care.~~ *(Indiana Emergency Medical Services Commission; 836 IAC 3-3-4; filed Oct 11, 1988, 11:05 a.m.: 12 IR 376; filed May 15, 1998, 10:25 a.m.: 21 IR 3926; filed Apr 4, 2002, 9:08 a.m.: 25 IR 2501; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2360)*

SECTION 20. 836 IAC 3-3-5 IS AMENDED TO READ AS FOLLOWS:

836 IAC 3-3-5 Staffing

Authority: IC 16-31-2-7; IC 16-31-3-20
Affected: IC 4-21.5-1; IC 16-31-3-14

Sec. 5. (a) Each certified fixed-wing ambulance while transporting an emergency patient shall be staffed by no less than three (3) people and include the following requirements:

(1) The first person shall be a properly certified pilot who shall complete an orientation program covering flight, and air-medical operations as prescribed by the air-medical director.

(2) The second person shall be an Indiana certified paramedic or registered nurse or a physician with a valid unlimited license to practice medicine.

(3) The third person shall be any appropriate personnel to properly care for the medical needs of the patient as required on board the fixed-wing aircraft in the patient compartment.

(4) All medical personnel on board the aircraft must be trained in air transport problems and principles of flight physiology.

(b) The advanced life support fixed-wing air ambulance service provider organization shall notify the commission in writing within thirty (30) days of any change in the advanced life support services provided.

~~(c) After proper notice and hearing, the commission may levy penalties up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 or 836 IAC 2-13-1 or suspend or revoke a certificate issued under 836 IAC 1, 836 IAC 2, and this article for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1 and 836 IAC 2.~~

~~(d) The commission may initiate proceedings to suspend or revoke a certificate upon its own motion or on the verified written complaint of any interested person, and all such proceedings will be held in and conducted in accordance with the provisions of IC 4-21.5-1.~~

~~(e) Notwithstanding 836 IAC 1 and 836 IAC 2, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without a hearing for a period not to exceed thirty (30) days upon notice to the certificate holder.~~

~~(f)~~ **(c)** Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease. *(Indiana Emergency Medical Services Commission; 836 IAC 3-3-5; filed Oct 11, 1988, 11:05 a.m.: 12 IR 378; filed May 15, 1998, 10:25 a.m.: 21 IR 3928; filed Apr 4, 2002, 9:08 a.m.: 25 IR 2503; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2362)*

SECTION 21. 836 IAC 4-1-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-1-1 Definitions

Authority: IC 16-31-2-7
Affected: IC 10-4-1-7; IC 16-18; IC 16-21-2; IC 16-31-3-1; IC 16-31-3-3; IC 25-22.5; IC 35-41-1-26.5

Sec. 1. The following definitions apply throughout this article unless the context clearly denotes otherwise:

(1) "Advanced emergency medical technician" means ~~a person~~ **an individual** who can perform one (1) or more, but not all, of the procedures of a paramedic and who:

(A) has completed a prescribed course in advanced life support;

(B) has been certified by the commission;

(C) is associated with a single supervising hospital; and

(D) is affiliated with a provider organization.

(2) "Advanced emergency medical technician intermediate" means an individual who can perform one (1) or more, but not all, of the procedures of a paramedic and who:

(A) has completed a prescribed course in advanced life support;

(B) has been certified by the commission;

(C) is associated with a single supervising hospital; and

(D) is affiliated with a provider organization.

(3) "Advanced emergency medical technician intermediate organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technician intermediates in conjunction with a supervising hospital.

~~(2)~~ **(4)** "Advanced emergency medical technician organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technicians in conjunction with a supervising hospital.

~~(3)~~ **(5)** "Advanced life support", **for purposes of IC 16-31,** means:

(A) care given:

(i) at the scene of an:

(AA) accident; ~~or~~

(BB) act of terrorism (as defined in IC 35-41-1-26.5), if the governor has declared a disaster emergency under IC 10-4-1-7 in response to the act of terrorism; or

(CC) illness; **or**

(ii) during transport ~~or~~ at a hospital;

by a paramedic, **advanced emergency medical technician intermediate,** or advanced emergency medical technician **and** that is more advanced than ~~that~~ **the care** usually ~~rendered~~ **provided** by an emergency medical technician; and

(B) may include: ~~but is not limited to, the following:~~

~~(A)~~ ~~Manual~~ **(i)** defibrillation;

~~(B)~~ **(ii)** endotracheal intubation;

~~(C)~~ **(iii)** parenteral injection of appropriate medications, **including administration of epinephrine through an auto-injector;**

~~(D)~~ **(iv)** electrocardiogram interpretation; **and**

~~(E)~~ **(v)** emergency management of trauma and illness.

~~(4)~~ **(6)** "Advanced life support nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, that provides advanced life support but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.

~~(5)~~ **(7)** "Ambulance" means any conveyance on land, sea, or air that is used or is intended to be used, for the purpose of responding to emergency life-threatening situations and providing transportation for an emergency patient.

~~(6)~~ **(8)** "Ambulance service provider" means any person who is certified by the commission and who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the transportation and care of emergency patients as a part of a regular course of doing business, either paid or voluntary.

~~(7)~~ **(9)** "An agency or instrumentality of the United States", as that phrase is used in IC 16-31-3-3, means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.

~~(8)~~ **(10)** "Anniversary date" means the date on which certification as a paramedic or an advanced emergency medical technician was issued by the commission.

~~(9)~~ **(11)** "Basic life support", for purposes of IC 16-31, means the following:

(A) Assessment of emergency patients.

(B) Administration of oxygen.

(C) Use of mechanical breathing devices.

(D) Application of anti-shock trousers.

(E) Performance of cardiopulmonary resuscitation.

(F) Application of dressing and bandage materials.

(G) Application of splinting and immobilization devices.

(H) Use of lifting and moving devices to ensure safe transport.

(I) Use of an automatic or a semiautomatic defibrillator if the defibrillator is used in accordance with training procedures established by the commission.

(J) Other procedures authorized by the commission, including procedures contained in the revised national emergency medical technician-basic training curriculum guide.

~~(10)~~ **(12)** "Certificate" or "certification" means authorization in written form issued by the commission to a person to furnish, operate, conduct, maintain, advertise, or otherwise engage in providing emergency medical services as a part of a regular course of doing business, either paid or voluntary.

~~(11)~~ **(13)** "Commission" means the Indiana emergency medical services commission.

~~(12)~~ **(14)** "Director" means the director of the state emergency management agency. ~~or the director's designee of the commission.~~

~~(13)~~ **(15)** "Emergency ambulance services" means the transportation of emergency patients by ambulance and the administration of emergency care procedures to emergency patients before, or during, such transportation.

~~(14)~~ **(16)** "Emergency management of trauma and illness" means the following:

(A) Those procedures for which the paramedic has been specifically trained that are a part of the curriculum prescribed by the commission.

(B) Those procedures for which the paramedic has been specifically trained as a part of the continuing education program and approved by the supervising hospital and the paramedic organization's medical director.

(C) Those procedures for which the advanced emergency medical technician has been specifically trained and have been approved by the administrative and medical staff of the supervising hospital, the advanced emergency medical technician organization medical director, and the commission as being within the scope and responsibility of the advanced emergency medical technician.

~~(15)~~ **(17)** "Emergency patient" means an individual who is acutely ill, injured, or otherwise incapacitated or helpless and who requires emergency care. The term includes an individual who requires transportation on a litter or cot or is transported in a vehicle certified as an ambulance under IC 16-31-3.

~~(16)~~ **(18)** "Emergency medical service nontransport provider" means an organization, certified by the commission, that provides first response patient care at an emergency that includes defibrillation but does not supply patient transport from the scene of the emergency.

~~(17)~~ **(19)** "Emergency medical service nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, that provides first response patient care at an emergency that includes defibrillation but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.

~~(18)~~ **(20)** "Emergency medical services" means the provision of emergency ambulance services or other services utilized in serving an individual's need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

~~(19)~~ **(21)** "Emergency medical services driver" means an individual who has a certificate of completion of a commission-approved driver training course.

~~(20)~~ **(22)** "Emergency medical services provider" means any

person certified by the commission who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the care of emergency patients as part of a regular course of doing business, either paid or voluntary.

~~(21)~~ **(23)** "Emergency medical services vehicle" means any of the following:

(A) An ambulance.

(B) An emergency medical services nontransport vehicle.

(C) A rescue squad.

(D) An advanced life support nontransport vehicle.

~~(22)~~ **(24)** "Emergency medical technician" means an individual certified by the commission who is:

(A) responsible for:

(i) the administration of emergency care procedures to emergency patients; and

(ii) the handling and transportation of such patients; and

(B) certified under this article.

~~(23)~~ **(25)** "First responder", for purposes of IC 16-31, means an individual who is:

(A) certified under IC 16-31 and meets the commission's standards for first responder certification; and

(B) the first individual to respond to an incident requiring emergency medical services.

~~(24)~~ **(26)** "Paramedic" means ~~a person~~ **an individual** who:

(A) is affiliated with a certified paramedic organization or is employed by a supervising hospital;

(B) has completed a prescribed course in advanced life support; and

(C) has been certified by the commission.

~~(25)~~ **(27)** "Paramedic organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by paramedics or physicians with an unlimited license to practice medicine in Indiana in conjunction with supervising hospitals.

~~(26)~~ **(28)** "Person" means any:

(A) natural person or persons;

~~(B) firm;~~

~~(C)~~ **(B)** partnership;

~~(D)~~ **(C)** corporation;

~~(E) company;~~

~~(F)~~ **(D)** association; ~~or~~

~~(G)~~ **(E)** joint stock association; ~~and~~ **or**

~~the legal successors thereof,~~ ~~including any~~

(F) governmental ~~agency or instrumentality,~~ **entity** other than an agency or instrumentality of the United States. ~~except an agency or instrumentality of the United States, as that phrase is used in IC 16-31-3-3(b), means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.~~

~~(27)~~ **(29)** "Physician" means an individual who currently holds a valid unlimited license to practice medicine ~~issued~~ in Indiana **under IC 25-22.5.**

~~(28)~~ **(30)** "Program ~~coordinator"~~ **director**" means a person employed by a certified training institution that coordinates the advanced life support courses.

~~(29)~~ **(31)** "Provider organization" means an ambulance service or other emergency care organization certified by the commission to provide advanced life support in connection with a supervising hospital.

~~(30)~~ **(32)** "Provider organization operating area" means the geographic area in which an advanced emergency medical technician, affiliated with a specific advanced emergency medical technician organization, is able to maintain two-way voice communication with the provider organization's supervising hospitals.

~~(31)~~ **(33)** "Rescue squad organization" means an organization that holds a voluntary certification to provide extrication, rescue, or emergency medical services.

~~(32)~~ **(34)** "Supervising hospital" means a hospital licensed under IC 16-21-2 or under the licensing laws of another state that has been certified by the commission to supervise paramedics, advanced emergency medical technicians, and provider organizations in providing advanced life support.

(Indiana Emergency Medical Services Commission; 836 IAC 4-1-1; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2745; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2362)

SECTION 22. 836 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-2-1 General requirements for training institutions; staff

Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-21; IC 16-31-3-2; IC 20-10.1-1-16; IC 20-12-62-3; IC 20-12-71-8

Sec. 1. (a) All institutions administering or seeking to administer emergency medical services training programs shall be certified by the commission. Any multiple campus institution administering or seeking to administer such programs shall have its training institution certified by the commission on a campus-by-campus basis.

(b) Each Indiana emergency medical services training institution of emergency medical technician programs shall be:

(1) a postsecondary institution as defined in ~~20-12-71-8;~~ **IC 20-12-71-8;**

(2) a private technical, vocational, or trade school as defined in ~~20-12-62-3;~~ **IC 20-12-62-3;**

(3) a high school as defined in ~~20-10.1-1-16;~~ **IC 20-10.1-1-16;**

(4) a provider organization as defined in ~~16-31;~~ **IC 16-31;** or

(5) an appropriately accredited hospital licensed under IC 16-21;

that has adequate resources and dedication to educational endeavors. Educational institutions shall be appropriately accredited by a regional accrediting association for higher education or have state licensure that assures comparable educational standards.

(c) Such an institution shall submit an application to the commission not less than ninety (90) days prior to the date for which certification is requested in a manner prescribed by the commission. Certification as an emergency medical services training institution is valid for a period of three (3) years from the date of certification.

(d) Certified emergency medical services training institutions shall be certified according to the institution's intent and ability to teach various levels of emergency medical services curricula as follows:

(1) Basic life support training institution, an institution that presents Indiana basic emergency medical technician or the Indiana emergency medical first responder training courses, or both.

(2) Advanced life support training institution, an institution that presents the Indiana advanced emergency medical technician, **Indiana advanced emergency medical technician intermediate,** or Indiana paramedic training courses, or ~~both.~~ **all levels of courses.**

(e) A certified training institution shall submit an application for recertification to the commission sixty (60) days prior to the date of certification expiration. The application for recertification shall indicate compliance with the requirements currently in effect at the time of the application for renewal.

~~(f) After notice and hearing, the commission may and is authorized to suspend or revoke a certificate issued under IC 16-31 or impose a fine of up to five hundred dollars ($500) in accordance with section 5 of this rule, or both, for fraud or misrepresentation in procuring certification, failure to comply and maintain compliance with, or for violation of, any applicable provisions, standards, or other requirement of IC 16-31 or this title. The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.~~

~~(g) Notwithstanding the provision of subsection (f), the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.~~

~~(h)~~ **(f)** Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease. *(Indiana Emergency Medical Services Commission; 836 IAC 4-2-1; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2747; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2364)*

SECTION 23. 836 IAC 4-2-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-2-2 Institutional responsibilities

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 2. A certified training institution seeking commission approval for administering emergency medical services training courses shall meet the following minimum requirements:

(1) Designate one (1) person as a training institution official responsible for administering all of the activities of the emergency medical services training institution and for communicating with the commission.

(2) Submit to an inspection of training facilities and equipment.

(3) Provide a list of educational staff to meet staffing-student ratio requirements outlined in approved curricula.

(4) Have the necessary clinical facilities, or affiliations with clinical facilities, to conduct the required clinical phases of emergency medical technician training programs.

(5) Under conditions where didactic and clinical training are to be conducted by separate institutions, program responsibility will rest with the institution that is certified by the commission. In cases where two (2) or more certified training institutions are cooperating in the presentation of an emergency medical services training program, both institutions will be held jointly responsible for the training programs.

(6) Provide evidence that the training institution has liability insurance on the students.

(7) Provide classroom space to effectively present the various requirements in the curricula.

(8) The curriculum requirements for all certified training programs shall be approved by the commission. Course applications will be made in a manner prescribed by the commission. The commission may disapprove a course application when it has been determined that the training institution or primary instructor has been found in noncompliance with rules and regulations.

(9) Have the training equipment and training aids (including the emergency care equipment) required by the curriculum of the courses that the training institution offers. The training institution shall have an adequate amount of the training equipment to be utilized by students to meet any equipment-to-student ratios prescribed by the curriculum being presented.

(10) Make available a minimum of twelve (12) hours, over a two (2) year period, of continuing education in educational principles and techniques for each of its affiliated primary instructors. A training institution may offer this continuing education or advise its faculty members of such continuing education at other sites. The training institution official may accept educational programs conducted at other facilities.

(11) Evaluate each course and affiliated primary instructor once during every year and retain a record of the evaluation in its files.

(12) Provide educational personnel for each approved training course, consisting of the following:

(A) Medical director.

(B) Program ~~coordinator~~ **director** (advanced emergency medical technician, **advanced emergency medical technician intermediate,** and paramedic courses only).

(C) Primary instructor.

(D) Instructional staff.

(13) Be responsible for in-course standards and criteria by which it determines a student's successful completion of the didactic and clinical portions of the course. The criteria include, but are not limited to, the following:

(A) Attendance requirements and absentee policies.

(B) In-course testing procedures.

(C) Number and scope of in-course tests.

(D) Didactic pass/fail grade average and criteria.

(E) Provision for make-up classes and tests.

(F) Minimum age for enrollment.

(G) Policies for providing reasonable accommodation pursuant to the Americans with Disabilities Act.

(14) Be responsible for the screening and evaluation criteria for admission into any certified training program.

(15) Assure a certified primary instructor, affiliated with the training institution, is present in each Indiana basic emergency medical technician class session.

(16) Have a retention schedule of seven (7) years for all training and course records.

(Indiana Emergency Medical Services Commission; 836 IAC 4-2-2; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2748; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2365)

SECTION 24. 836 IAC 4-3-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-3-2 Certification standards

Authority: IC 16-31-2-7
Affected: IC 16-31-2-8; IC 16-31-3

Sec. 2. (a) Applicants for original certification as a first responder shall meet the following requirements:

(1) Be a minimum of eighteen (18) years of age.

(2) Have successfully completed a commission-approved first responder course.

(3) Have successfully completed a state written and practical skills examinations as approved by the commission.

(b) Certification as a first responder shall be valid for a period of two (2) years and shall remain valid as long as compliance with the continuing education requirements of subsection (c) are maintained and reported to the commission prior to the certification expiration date.

(c) To remain certified as a first responder, each certified first responder shall submit a report of continuing education every two (2) years that meets or exceeds the minimum requirement to take and report twenty (20) hours of continuing education according to the following:

(1) Participate in a minimum of sixteen (16) hours of any combination of lectures, critiques, skills proficiency examination, or audit and review, which reviews subject matter presented in the Indiana first responder curriculum.

(2) Participate in a minimum of four (4) hours in defibrillation and airway management as presented in the Indianan first responder curriculum.

(d) An individual who fails to comply with the continuing education requirements described in this article forfeits all rights and privileges of a certified first responder and shall cease from providing the services authorized by a first responder certification as of the date of expiration of the current certificate.

~~(e) The commission shall penalize a first responder or the certificate of any first responder, or both, shall be suspended or revoked by the commission under this article for any of the following:~~

~~(1) Fraud or misrepresentation in procuring certification.~~

~~(2) Failure to perform or failure to perform competently an indicated procedure for which training has been received in the first responder training course as approved by the commission.~~

~~(3) Performing a procedure for which training:~~

~~(A) has not been received in the first responder training course as approved by the commission; or~~

~~(B) is not within the scope and responsibility of a first responder as determined by the commission.~~

~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as a first responder.~~

~~(5) Has been convicted of an offense, if the acts that resulted in the conviction have a direct bearing on whether or not the person should be entrusted to serve the public as a first responder.~~

~~(6) Failure to comply with this title.~~

(Indiana Emergency Medical Services Commission; 836 IAC 4-3-2; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2751; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2366)

SECTION 25. 836 IAC 4-4-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-4-1 General certification provisions

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 1. (a) Applicants for original certification as an emergency medical technician shall meet the following requirements:

(1) Be a minimum of eighteen (18) years of age.

(2) Successfully complete the Indiana basic emergency medical technician training course as approved by the commission and administered by a certified training institution.

(3) Pass the emergency medical technician written and practical skills examinations as set forth and approved by the commission.

(b) The applicant shall apply for certification on forms prescribed by the commission postmarked within one (1) year of the date that the course was concluded as shown on the course report.

(c) The minimum requirement for basic emergency medical technicians training shall be as follows:

(1) The current version of the Indiana basic emergency medical technician training course as amended and approved by the commission.

(2) Each Indiana basic emergency medical technician course shall be supervised by a commission-certified primary instructor who is affiliated with the course sponsoring training institution as described in this article.

(d) No course shall be approved as equivalent to subsection (c) unless the course meets the training standards currently in effect.

~~(e) Under IC 16-31-3, the commission may penalize an emergency medical technician or the certificate of any emergency medical technician, or both may be suspended or revoked by the commission under the provision of 836 IAC 1-2-4 for any of the following:~~

~~(1) Fraud or misrepresentation in procuring certification.~~

~~(2) Failure to perform or failure to perform competently an indicated procedure for which training has been received in the basic emergency medical technician training course as approved by the commission.~~

~~(3) Performing a procedure for which training has not been received in the basic emergency medical technician training course as approved by the commission or which is not within the scope and responsibility of an emergency medical technician as determined by the commission.~~

~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as an emergency medical technician.~~

~~(5) Conviction of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person should be entrusted to serve the public as an emergency medical technician.~~

~~(6) Delegating to a person less qualified any skill that requires the professional competence of an emergency medical technician.~~

~~(7) Failure to comply with this title.~~

~~(f)~~ **(e)** Emergency medical technicians shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the completion of at least the prescribed regimen of continuing education described in this article.

(2) Perform quality patient care based on the content of approved training or the orders of the provider medical director.

(3) Uphold and respect the patient's right to privacy, dignity, and safety by keeping confidential patient information.

(4) Abiding by the legal responsibilities and limitations imposed upon the emergency medical technician by training and state law.

(Indiana Emergency Medical Services Commission; 836 IAC 4-4-1; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2752; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2366)

SECTION 26. 836 IAC 4-5-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-5-2 Certification and recertification; general

Authority: IC 16-31-2-7
Affected: IC 16-31-3-14

Sec. 2. (a) Application for certification will be made on forms and according to procedures prescribed by the commission. In order to be certified as an emergency medical services primary instructor, the applicant shall meet the following requirements:

(1) Successfully complete a commission-approved Indiana emergency medical services primary instructor training course.

(2) Successfully complete the primary instructor internship.

(3) Successfully complete the primary instructor written examination.

(4) Be currently certified as an Indiana emergency medical technician.

(b) Certification as an emergency medical services primary instructor is valid for two (2) years.

(c) In order to retain certification as a primary instructor, a person shall meet the following requirements:

(1) Retain affiliation with at least one (1) Indiana certified training institution.

(2) Conduct a minimum of eighty (80) hours of educational sessions based upon the emergency medical service curricula, which in content are either less than or equal to the primary instructor's level of clinical certification.

(3) Complete a minimum of twelve (12) hours of continuing education that specifically addresses the topic of educational philosophy and techniques, offered or approved by the affiliating training institution.

(4) Be evaluated by the training institution in regard to instructional skills and compliance with existing standards of the training institution and the commission at least once per course.

(5) Every two (2) years present, to the commission, evidence of compliance with this subsection during the period of certification as prescribed by the commission.

(d) The minimum requirements for emergency medical services primary instructor training is the current version of the Indiana primary instructor course, based upon the current national standard curriculum as amended and approved by the commission.

~~(e) Under IC 16-31-3-14, the commission may penalize a primary instructor or the certificate of any primary instructor, or both, may be suspended or revoked by the commission under the provision of 836 IAC 1-2-4 for any of the following:~~

~~(1) Fraud or misrepresentation in procuring certification.~~

~~(2) Failure to perform or failure to perform competently procedures that are within the patient care standards or the scope and responsibility of the primary instructor.~~

~~(3) Failure to perform the responsibilities of a primary instructor as listed in 836 IAC 4-2-3(b)(3).~~

~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of an emergency medical services student, a member of the training institution staff, or a member of the general public.~~

~~(5) Has been convicted of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person shall be entrusted to serve the public as a primary instructor.~~

~~(6) Failure to comply with this title.~~

~~(f)~~ **(e)** A primary instructor shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the completion of at least the prescribed regimen of continuing education described in this article.

(2) Uphold and respect the student's right to privacy, dignity, and safety by keeping student information confidential.

(3) Abiding by the legal responsibilities and limitations imposed upon the primary instructor.

(Indiana Emergency Medical Services Commission; 836 IAC 4-5-2; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2754; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2367)

SECTION 27. 836 IAC 4-6.1 IS ADDED TO READ AS FOLLOWS:

Rule 6.1. Advanced Emergency Medical Technician Intermediate Training

836 IAC 4-6.1-1 Advanced emergency medical technician intermediate training

Authority: IC 16-31-2-7
Affected: IC 16-31-3-20

Sec. 1. (a) All institutions administering or seeking to administer training programs for advanced emergency medical technician intermediates who engage in the provision of advanced life support services are required to be certified by the commission.

(b) An institution certified by the commission to conduct training programs for advanced emergency medical technician intermediates must:

(1) be a training institution certified under 836 IAC 4-2; and

(2) operate according to the procedures described in 836 IAC 4-2.

(c) The minimum curriculum requirements for advanced emergency medical technician intermediate training shall be the Indiana advanced emergency medical technician intermediate training curriculum based upon the current national standard curriculum as amended and approved by the commission.

(d) The program director shall be a physician, a registered nurse, a paramedic, or an advanced emergency medical technician intermediate responsible for the duties of 836 IAC 4-2. *(Indiana Emergency Medical Services Commission; 836 IAC 4-6.1-1; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2368)*

SECTION 28. 836 IAC 4-7-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-7-2 Certification provisions; general

Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3-14

Sec. 2. (a) ~~Applicants~~ **An applicant** for certification as an advanced emergency medical technician shall meet the following requirements:

(1) Be an Indiana certified emergency medical technician.

(2) Be affiliated with a certified advanced emergency medical technician organization or a supervising hospital.

(3) Successfully complete the Indiana advanced emergency medical technician training course as approved by the commission and administered by a certified training institution.

(4) Pass the advanced emergency medical technician written and practical skills examinations as approved by the commission.

(b) The applicant shall apply for certification on forms prescribed by the commission postmarked within one (1) year of the date that the course was concluded as shown on the course report.

(c) The applicant shall submit verification of all affiliated providers and supervising hospitals.

(d) Certification exemptions identified under 836 IAC 2-7.1-1(j) shall apply to the certification of advanced emergency medical technicians.

(e) Advanced emergency medical technicians are prohibited from having in their possession, or maintained on-board emergency response vehicles, any advanced life support equipment or supplies that have not been approved by advanced emergency medical technician organization medical director.

(f) Advanced emergency medical technicians shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the

completion of at least the prescribed regimen of continuing education described in this article.

(2) Perform quality patient care based on the content of approved training or the orders of the provider medical director.

(3) Uphold and respect the patient's right to privacy, dignity, and safety by keeping confidential patient information.

(4) Abide by the legal responsibilities and limitations imposed upon the advanced emergency medical technician by training and applicable laws.

~~(g) Under IC 16-31-3-14, the commission may penalize an advanced emergency medical technician or the certificate of any advanced emergency medical technician, or both, may be suspended or revoked by the commission under 836 IAC 1-2-4 and 836 IAC 2-13-1 for any of the following:~~

~~(1) Fraud or misrepresentation in procuring certification.~~

~~(2) Failure to perform or failure to perform competently an indicated procedure for which training has been received in the basic emergency medical technician training course as approved by the commission.~~

~~(3) Performing a procedure for which training:~~

~~(A) has not been received in the basic emergency medical technician training course or advanced emergency medical technician training course as approved by the commission; or~~

~~(B) is not within the scope and responsibility of an advanced emergency medical technician as determined by the commission.~~

~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as an advanced emergency medical technician.~~

~~(5) Conviction of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person should be entrusted to serve the public as an advanced emergency medical technician.~~

~~(6) Delegating to a person less qualified any skill that requires the professional competence of an advanced emergency medical technician.~~

~~(7) Failure to comply with this title.~~

~~(h) Procedures for suspension, revocation, or termination of certification pursuant to IC 16-31 apply to advanced emergency medical technician certification.~~ *(Indiana Emergency Medical Services Commission; 836 IAC 4-7-2; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2755; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2368)*

SECTION 29. 836 IAC 4-7.1 IS ADDED TO READ AS FOLLOWS:

Rule 7.1. Advanced Emergency Medical Technician Intermediate; Certification

836 IAC 4-7.1-1 Student qualification to enter training

Authority: IC 16-31-2-7
Affected: IC 16-31-3-2

Sec. 1. An applicant for Indiana advanced emergency medical technician intermediate training shall meet the following requirements:

(1) Hold a valid certificate as an emergency medical technician.

(2) Be at a minimum of eighteen (18) years of age.

(3) Have a high school diploma or general education diploma.

(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-1; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2369)

836 IAC 4-7.1-2 Registered nurses; qualification to enter training

Authority: IC 16-31-2-7
Affected: IC 16-31-3-2

Sec. 2. (a) A registered nurse may challenge the advanced emergency medical technician intermediate course if he or she meets the following requirements:

(1) Be a registered nurse in Indiana.

(2) Be an Indiana certified emergency medical technician.

(3) Be able to document one (1) year of experience in an emergency department or as a flight nurse with an air ambulance service.

(4) Hold an advanced cardiac life support certification.

(5) Hold either an American Heart Association or American Red Cross health care provider card.

(6) Be able to meet prerequisites required by the commission, the advanced emergency medical technician intermediate curriculum, and the local training institution course.

(b) For successful completion of the advanced emergency medical technician intermediate training course, a registered nurse must meet all of the requirements set forth by the training institution for all students or meet the prerequisites as described in subsection (a) and the following:

(1) May earn credit by written examination for individual modules of the advanced emergency medical technician intermediate course.

(2) Test out of a module to be completed prior to the beginning of that module by completing:

(A) the written examination with a passing score; and

(B) the practical skills examination with a passing score.

Failure of any module exam will require the students to participate in the entire module.

(3) Successfully complete the advanced emergency medical technician intermediate program comprehensive final examination.

(4) Demonstrate skill proficiency by completing the advanced emergency medical technician intermediate level skills with course proficiency.

(5) May earn credit of clinical hours by review of the student's past experience in the clinical areas.

(6) Complete all field internship and required hospital clinical hours.

(7) Pass the advanced emergency medical technician intermediate written and practical skills examinations as approved by the commission.

(8) Meet general certification requirements in section 3 of this rule.

(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-2; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2369)

836 IAC 4-7.1-3 General certification

Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3-14

Sec. 3. (a) An applicant for certification as an advanced emergency medical technician intermediate shall meet the following requirements:

(1) Be a certified emergency medical technician.

(2) Be affiliated with a certified advanced emergency medical technician intermediate organization or a supervising hospital.

(3) Successfully complete the Indiana advanced emergency medical technician intermediate training course as approved by the commission and administered by an Indiana certified training institution.

(4) Pass the advanced emergency medical technician intermediate written and practical skills examinations as approved by the commission.

(b) The applicant shall apply for certification on forms prescribed by the commission postmarked within one (1) year of the date of successful completion of the required certification examinations.

(c) The applicant shall submit verification of all affiliated providers and supervising hospitals.

(d) Certification exemptions identified under 836 IAC 2-2-1(k) apply to the certification of advanced emergency medical technician intermediates.

(e) Advanced emergency medical technician intermediates are prohibited from having in their possession, or maintained on-board emergency response vehicles, any advanced life support equipment or supplies that have not been approved by the advanced emergency medical technician intermediate organization medical director.

(f) Under IC 16-31-3-14, the commission may penalize a advanced emergency medical technician intermediate or the certificate of any advanced emergency medical technician intermediate, or both, may be suspended or revoked by the commission under 836 IAC 1-2-4 and 836 IAC 2-13-1 for any of the following:

(1) Fraud or misrepresentation in procuring certification.

(2) Failure to perform or failure to perform competently procedures that are within the patient care standards or scope and responsibility of advanced emergency medical technician intermediates for which training has been received in the advanced emergency medical technician intermediate training course as approved by the commission.

(3) Performing a procedure for which training:

(A) has not been received in the basic emergency medical technician course or advanced emergency medical technician intermediate training course as approved by the commission; or

(B) is not within the scope and responsibility of an advanced emergency medical technician intermediate as determined by the commission.

(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as a advanced emergency medical technician intermediate.

(5) Conviction of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person should be entrusted to serve the public as a advanced emergency medical technician intermediate.

(6) Delegating to a person less qualified any skill that requires the professional competence of a advanced emergency medical technician intermediate.

(7) Failure to comply with this title.

(g) Advanced emergency medical technician intermediates shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the completion of at least the prescribed regimen of continuing education described in this article.

(2) Perform quality patient care based on the content of approved training or the orders of the provider medical director.

(3) Uphold and respect the patient's right to privacy, dignity, and safety by keeping confidential patient information.

(4) Abide by the legal responsibilities and limitations imposed upon the advanced emergency medical technician intermediate by training and applicable laws.

(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-3; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2370)

836 IAC 4-7.1-4 Application for certification; renewal

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 4. (a) Application for certification as an advanced emergency medical technician intermediate shall be made on forms prescribed by the commission. An applicant shall complete the required forms and shall submit the forms to the director.

(b) All applicants for original certification shall provide

evidence of compliance with the requirements for certification.

(c) Certification as an advanced emergency medical technician intermediate shall be valid for two (2) years and remain valid as long as compliance with the continuing education requirements are maintained and reported every two (2) years to the commission prior to the certification expiration date.

(d) Individuals who have failed to comply with the continuing education requirements shall not exercise any of the rights and privileges nor administer advanced life support services to emergency patients.

(e) An individual wanting to reacquire a certification shall complete an advanced emergency medical technician intermediate recertification training course and successful completion of state written and practical skills examinations as set forth and approved by the commission. If the individual fails the certification examinations, the person shall retake an entire advanced emergency medical technician intermediate training course. *(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-4; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2370)*

836 IAC 4-7.1-5 Continuing education requirements

Authority: IC 16-31-2-7
Affected: IC 16-31-3-8; IC 16-31-3-20

Sec. 5. (a) Any applicant making application for certification or certification renewal shall meet the qualifications in this section to maintain their certification. Concurrent emergency medical technician certification shall be maintained if the requirements in this section are fulfilled.

(b) An applicant shall report a minimum of seventy-two (72) hours of continuing education consisting of the following:

(1) Section Ia, thirty-six (36) hours of continuing education adhering to and including the content of the Indiana emergency medical technician intermediate course.

(2) Section Ib, attach a current copy of advanced cardiac life support certification.

(3) Section Ic, attach a current copy of cardiopulmonary resuscitation certification.

(4) Section II, thirty-six (36) hours of continuing education with twelve (12) hours audit and review. No more than eighteen (18) hours may be taken in any one (1) topic.

(5) Section III, skill maintenance (with no specified hour requirement), all skills shall be directly observed by the emergency medical service medical director or emergency medical service educational staff of the supervising hospital, either at an inservice or in an actual clinical setting. The observed skills include, but are not limited to, the following:

(A) Patient assessment and management; medical and trauma.
(B) Ventilatory management skills/knowledge.
(C) Cardiac arrest management.
(D) Hemorrhage control and splinting procedures.
(E) IV therapy skills.
(F) Spinal immobilization; seated and lying patients.
(G) Obstetrics and gynecologic skills/knowledge.
(H) Other related skills/knowledge:
(i) radio communications; and
(ii) report writing and documentation.

(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-5; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2371)

836 IAC 4-7.1-6 Advanced emergency medical technician intermediate certification based upon reciprocity

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 6. (a) An applicant for advanced emergency medical technician intermediate certification based upon reciprocity shall be affiliated with a certified advanced emergency medical technician intermediate provider organization and meet one (1) of the following requirements:

(1) Be a person who, at the time of applying for reciprocity, possesses a valid certificate or license as an advanced emergency medical technician intermediate from another state and who successfully passes the advanced emergency medical technician intermediate practical and written certification examinations as set forth and approved by the commission. Application for certification shall be postmarked or delivered to the commission office within six (6) months of the request for reciprocity.

(2) Be a person who, at the time of applying for reciprocity, has successfully completed a course of training and study equivalent to the material contained in the Indiana advanced emergency medical technician intermediate training course and successfully completes the written and practical skills certification examinations prescribed by the commission.

(3) Be a person who, at the time of applying for reciprocity, possesses a valid National Registry intermediate certification based on the advanced emergency medical technician intermediate curriculum approved by the commission.

(b) Notwithstanding subsection (a), any nonresident of Indiana who possesses a certificate or license as an advanced emergency medical technician intermediate that is valid in another state may apply to the director for temporary certification as an advanced emergency medical technician intermediate. Upon receipt of a valid application

and verification of valid status by the director, the director may issue temporary certification that shall be valid for the duration of the applicant's current certificate or license, or for a period not to exceed six (6) months from the date that the reciprocity request is approved by the director, whichever period of time is shorter. A person receiving temporary certification may apply for full certification using the procedure required in section 1 of this rule. *(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-6; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2371)*

SECTION 30. 836 IAC 4-9-3 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-9-3 General certification
Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3-14

Sec. 3. (a) An applicant for certification as a paramedic shall meet the following requirements:

(1) Be ~~an~~ **a** certified emergency medical technician.

(2) Be affiliated with a certified paramedic organization or a supervising hospital.

(3) Successfully complete the Indiana paramedic training course as approved by the commission and administered by an Indiana certified training institution.

(4) Pass the paramedic written and practical skills examinations as approved by the commission.

(b) The applicant shall apply for certification on forms prescribed by the commission postmarked within one (1) year of the date ~~that the course was concluded as shown on the course report.~~ **of successful completion of the required certification examinations.**

(c) The applicant shall submit verification of all affiliated providers and supervising hospitals.

(d) Certification exemptions identified under 836 IAC 2-2-1(k) apply to the certification of paramedics.

(e) Paramedics are prohibited from having in their possession, or maintained on-board emergency response vehicles, any advanced life support equipment or supplies that have not been approved by the paramedic organization medical director.

~~(f) Under IC 16-31-3-14, the commission may penalize a paramedic or the certificate of any paramedic, or both, may be suspended or revoked by the commission under 836 IAC 1-2-4 and 836 IAC 2-13-1 for any of the following:~~

~~(1) Fraud or misrepresentation in procuring certification.~~

~~(2) Failure to perform or failure to perform competently procedures that are within the patient care standards or scope and responsibility of paramedics for which training has been received in the paramedic training course as approved by the commission.~~

~~(3) Performing a procedure for which training has not been received or has not been approved by the medical director.~~

~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as a paramedic.~~

~~(5) Conviction of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person should be entrusted to serve the public as a paramedic.~~

~~(6) Delegating to a person less qualified any skill that requires the professional competence of a paramedic.~~

~~(7) Failure to comply with this title.~~

~~(g)~~ **(f)** Paramedics shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the completion of at least the prescribed regimen of continuing education described in this article.

(2) Perform quality patient care based on the content of approved training or the orders of the provider medical director.

(3) Uphold and respect the patient's right to privacy, dignity, and safety by keeping confidential patient information.

(4) Abide by the legal responsibilities and limitations imposed upon the paramedic by training and applicable laws.

(Indiana Emergency Medical Services Commission; 836 IAC 4-9-3; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2757; filed Feb 20, 2003, 8:00 a.m.: 26 IR 2372)

SECTION 31. THE FOLLOWING ARE REPEALED: 836 IAC 1-2-4; 836 IAC 1-8-1; 836 IAC 1-11-5; 836 IAC 2-12-1; 836 IAC 2-13-1; 836 IAC 3-2-8; 836 IAC 3-3-8; 836 IAC 3-4-1; 836 IAC 4-2-5; 836 IAC 4-10-1.

LSA Document #02-91(F)
Notice of Intent Published: 25 IR 2280
Proposed Rule Published: June 1, 2002; 25 IR 2809
Hearing Held: August 22, 2002
Approved by Attorney General: February 13, 2003
Approved by Governor: February 18, 2003
Filed with Secretary of State: February 20, 2003, 8:00 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

LSA Document #02-181(F)

DIGEST

Amends 844 IAC 6-4-1 concerning mandatory registration and renewal of licenses for physical therapists and mandatory registration and renewal of certificates for physical therapist's assistants. Effective 30 days after filing with the secretary of state.

844 IAC 6-4-1

SECTION 1. 844 IAC 6-4-1 IS AMENDED TO READ AS FOLLOWS:

844 IAC 6-4-1 Mandatory registration; renewal
Authority: IC 25-27-1-5
Affected: IC 25-27-1-8

Sec. 1. (a) Every physical therapist ~~and physical therapist's assistant~~ holding a license issued by the committee shall renew his or her license biennially on or before July 1 of each even-numbered year. ~~No fee is required for the year in which the physical therapist or physical therapist's assistant is issued his or her first license.~~

(b) A licensee's failure to receive notification of renewal due to failure to notify the committee of a change of address or name shall not constitute an error on the part of the committee, board, or bureau, nor shall it exonerate or otherwise excuse the licensee from renewing such license.

(c) Every physical therapist's assistant holding a certificate issued by the committee shall renew his or her certificate biennially on or before July 1 of each even-numbered year.

(d) A certificate holder's failure to receive notification of renewal due to failure to notify the committee of a change of address or name shall not constitute an error on the part of the committee, board, or bureau, nor shall it exonerate or otherwise excuse the certificate holder from renewing such certificate. *(Medical Licensing Board of Indiana; 844 IAC 6-4-1; filed Mar 10, 1983, 3:59 p.m.: 6 IR 775; filed Aug 6, 1987, 3:00 p.m.: 10 IR 2735; filed Sep 22, 1994, 4:30 p.m.: 18 IR 266; readopted filed Nov 9, 2001, 3:16 p.m.: 25 IR 1325; filed Feb 10, 2003, 3:30 p.m.: 26 IR 2372)*

LSA Document #02-181(F)
Notice of Intent Published: 25 IR 3211
Proposed Rule Published: November 1, 2002; 26 IR 541
Hearing Held: December 5, 2002
Approved by Attorney General: January 21, 2003
Approved by Governor: February 5, 2003
Filed with Secretary of State: February 10, 2003, 3:30 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 852 INDIANA OPTOMETRY BOARD

LSA Document #02-132(F)

DIGEST

Amends 852 IAC 1-13-1 concerning license revocation and the duties of practitioners whose licenses have been revoked. Amends 852 IAC 1-13-2 concerning license suspension and the duties of practitioners whose licenses have been suspended. Effective 30 days after filing with the secretary of state.

852 IAC 1-13-1
852 IAC 1-13-2

SECTION 1. 852 IAC 1-13-1 IS AMENDED TO READ AS FOLLOWS:

852 IAC 1-13-1 License revocation; duties of licensees
Authority: IC 25-24-1-1
Affected: IC 25-24-1-3

Sec. 1. In any case where a practitioner's license has been revoked, said person shall **do the following:**

(1) Promptly notify, or cause to be notified in the manner and method specified by the board, all patients then in the care of the practitioner, or those persons responsible for the patient's care, of the revocation and of the practitioner's consequent inability to act for or on their behalf in the practitioner's professional capacity. Such notice shall advise all patients to seek the services of another practitioner in good standing of their own choice.

(2) Promptly notify, or cause to be notified, all health care facilities where such practitioner has privileges, of the revocation accompanied by a list of all patients then in the care of such practitioner.

(3) Notify in writing, by first class mail, the following organizations and governmental agencies of the revocation of licensure:

(A) Indiana ~~department of public welfare;~~ **family and social services administration.**

(B) Social Security Administration.

(C) The boards or equivalent agency of each state in which the person is licensed to practice optometry.

(D) The ~~International~~ Association of **Regulatory** Boards of ~~Examiners in~~ Optometry. ~~Inc.~~

(4) Make reasonable arrangements with said ~~licensee's~~ **practitioner's** active patients for the transfer of all patient records, studies, and test results, or copies thereof, to a succeeding practitioner employed by the patient or by those responsible for the patient's care.

(5) Within thirty (30) days after the date of license revocation, the practitioner shall file an affidavit with the board showing compliance with the provisions of the revocation order and with ~~852 IAC 1-13,~~ **this rule,** which time may be extended by the board. Such affidavit shall also state all other jurisdictions in which the practitioner is still licensed.

(6) Proof of compliance with this section shall be a condition precedent to **filing** any ~~petition for reinstatement.~~ **application for licensure.**

(Indiana Optometry Board; 852 IAC 1-13-1; filed May 11, 1987, 9:00 a.m.: 10 IR 1878; readopted filed Jul 10, 2001, 3:00 p.m.: 24 IR 4238; filed Feb 10, 2003, 3:30 p.m.: 26 IR 2373)

SECTION 2. 852 IAC 1-13-2 IS AMENDED TO READ AS FOLLOWS:

852 IAC 1-13-2 License suspension; duties of licensees

Authority: IC 25-24-1-1
Affected: IC 25-24-1-3

Sec. 2. (a) In any case where a person's license has been suspended, said person shall, within thirty (30) days from the date of the order of suspension, file with the board an affidavit that **confirms the following:**

(1) All active patients then under the practitioner's care have been notified in the manner and method specified ~~by~~ by the board of the practitioner's suspension and consequent inability to act for or on their behalf in a professional capacity. Such notice shall advise all such patients to seek the services of another practitioner of good standing of their own choice.

(2) All health care facilities where such practitioner has privileges have been informed of the suspension order.

(3) Reasonable arrangements were made for the transfer of patient records, studies, and test results, or copies thereof, to a succeeding practitioner employed by the patient or those responsible for the patient's care.

(4) The following organizations and governmental agencies have been notified in writing, by first class mail, of the suspension of the practitioner's license:

(A) Indiana family and social services administration.

(B) Social Security Administration.

(C) The boards or equivalent agency of each state in which the person is licensed to practice optometry.

(D) The Association of Regulatory Boards of Optometry.

(b) Proof of compliance with this section shall be a condition precedent to reinstatement. *(Indiana Optometry Board; 852 IAC 1-13-2; filed May 11, 1987, 9:00 a.m.: 10 IR 1879; readopted filed Jul 10, 2001, 3:00 p.m.: 24 IR 4238; filed Feb 10, 2003, 3:30 p.m.: 26 IR 2374)*

LSA Document #02-132(F)
Notice of Intent Published: 25 IR 2749
Proposed Rule Published: August 1, 2002; 25 IR 3869
Hearing Held: November 13, 2002
Approved by Attorney General: January 22, 2003
Approved by Governor: February 5, 2003
Filed with Secretary of State: February 10, 2003, 3:30 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #02-40(AC)

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in LSA Document #02-40(F), printed at 26 IR 2300:

(1) In 45 IAC 18-3-7(a), on page 11 of the original document (26 IR 2308), after "gaming license or nonlicense letter", insert "issued on or after May 1, 2003".

(2) In 45 IAC 18-3-7(a)(2), on page 12 of the original document (26 IR 2308), delete "Ten percent (10%)" and insert "Eight percent (8%)".

(3) In 45 IAC 18-3-7(a)(3), on page 12 of the original document (26 IR 2308), delete "Twelve percent (12%)" and insert "Ten percent (10%)".

Filed with Secretary of State: March 10, 2003, 11:43 a.m.

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

NOTE: This change was incorporated into the printed version of LSA Document #02-40(F) and may be found at 26 IR 2300, as corrected.

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Under IC 4-22-8-4(c), corrects the following clerical error in the Indiana Administrative Code, 2003 edition:

In 170 IAC 7-1.3-2(7)(B)(i), after "four (4) or", insert "fewer".

Retroactively effective to the same date and time as LSA Document #01-342(F).

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #02-13(AC)

Under IC 4-22-2-38, corrects the following clerical error in LSA Document #02-13(F), printed at 26 IR 706:

In 405 IAC 1-14.6-7(e), on page 11 of the original document (26 IR 713), after "the first day of the", delete "month" and insert "calendar quarter".

Filed with Secretary of State: February 27, 2003, 11:33 a.m.

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

TITLE 412 INDIANA HEALTH FACILITIES COUNCIL

LSA Document #02-41(AC)

Under IC 4-22-2-38, corrects the following typographical, clerical, and spelling errors in LSA Document #02-41(F), printed at 26 IR 1937:

(1) In 412 IAC 2-1-2.1(c), on page 1 of the original document (26 IR 1937), after "as", insert "a".

(2) In 412 IAC 2-1-2.2(4), on page 2 of the original document (26 IR 1937), after "within", delete "in".

Filed with Secretary of State: February 10, 2003, 3:50 p.m.

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

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #02-338(PC)

Under IC 4-22-8-4(c), corrects the following clerical error in LSA Document #02-338(F), printed at 26 IR 2128:

In 905 IAC 1-45-6, at 26 IR 2129, the section heading and the first sentence of the section were inadvertently printed in the wrong column. The correct organization of the section is as follows:

905 IAC 1-45-6 Penalties
Authority: IC 7.1-2-3-7; IC 7.1-3-6.5
Affected: IC 7.1-3-6.5

Sec. 6. (a) A permittee who, at the time of sale of a keg, fails to:

(1) place an identification marker on the keg; and

(2) obtain a signed receipt from the purchaser;

may be fined in an amount of not more than one thousand dollars ($1,000) for each violation and have their permit suspended, in addition to any other penalty provided by law.

(b) A permittee, other than a wholesaler or brewer, who removes an identification marker in violation of this rule, may be fined in an amount of not more than one thousand dollars ($1,000) for each violation and have their permit suspended, in addition to any other penalty provided by law. *(Alcohol and Tobacco Commission; 905 IAC 1-45-6)*

Retroactively effective to the same date and time as LSA Document #02-338(F).

Notice of Recall

TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #02-40

Under IC 4-22-2-40, LSA Document #02-40, printed at 25 IR 3219, is recalled.

TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #02-305

Under IC 4-22-2-40, LSA Document #02-305, printed at 26 IR 817, is recalled.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #02-115

Under IC 4-22-2-40, LSA Document #02-115, printed at 25 IR 3291, is recalled.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #02-116

Under IC 4-22-2-40, LSA Document #02-116, printed at 25 IR 3366, is recalled.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #02-117

Under IC 4-22-2-40, LSA Document #02-117, printed at 25 IR 3381, is recalled.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #02-118

Under IC 4-22-2-40, LSA Document #02-118, printed at 25 IR 3443, is recalled.

TITLE 880 SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD

LSA Document #02-269

Under IC 4-22-2-41, LSA Document #02-269, printed at 26 IR 875, is withdrawn.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-49(E)

DIGEST

Temporarily adds rules concerning instant game number 648. Effective February 13, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 648, Red Hot Doubler".**

SECTION 2. **Instant tickets in instant game number 648 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 648 shall contain ten (10) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Ten (10) play symbols and play symbol captions shall appear in the "YOUR NUMBERS" area representing numbers. One (1) play symbol and play symbol caption representing a number shall appear in the area labeled "LUCKY NUMBER", and one (1) play symbol and play symbol caption representing a prize amount shall appear in area labeled "PRIZE".**

(b) The play symbols and play symbol captions, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELV
(12) 12
TLV
(13) 13
TRN
(14) 14
FRN
(15) 15
FTN
(16) 16
SXT
(17) 17
SVT
(18) 18
ETN
(19) 19
NTN
(20) 20
TWY

(c) The play symbols representing prize amounts shall consist of the following possible play symbols:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $4.00
FOUR
(4) $6.00
SIX
(5) $8.00
EIGHT
(6) $12.00
TWELVE
(7) $20.00
TWENTY
(8) $40.00
FORTY
(9) $50.00
FIFTY
(10) $80.00
EIGHTY
(11) $100
ONE HUN
(12) $150
ONE FTY
(13) $300
THR HUN
(14) $1,500
FTN HUN
(15) $3,000
THR THOU

SECTION 4. **The holder of a ticket in instant game number 648 shall remove the latex material covering the twelve (12) play symbols and play symbol captions. If one (1) or more play symbols and play symbol captions in the "YOUR NUMBERS" area match the play symbol and play symbol caption in the "LUCKY NUMBER" area, the holder is entitled to the prize amount in the 'PRIZE" area.**

If the play symbol and play symbol caption exposed in the "YOUR NUMBERS" area is red, the player is entitled to double the prize amount exposed. The number of matches, prize amounts, and number of winners in instant game number 648 are as follows:

Number of Matches and Matched Prize Amounts	Total Prize Amount	Approximate Number of Winners
1–$1.00	$1	495,000
1–$2.00	$2	99,000
1–$3.00	$3	45,000
1–$4.00	$4	24,000
1–$2.00 (red)	$4	24,000
1–$8.00	$8	12,000
1–$4.00 (red)	$8	12,000
1–$12.00	$12	9,000
1–$6.00 (red)	$12	9,000
1–$20.00	$20	6,000
1–$40.00	$40	2,610
1–$20.00 (red)	$40	2,610
1–$80.00	$80	735
1–$40.00 (red)	$80	735
1–$100	$100	450
1–$50 (red)	$100	450
1–$300	$300	120
1–$150 (red)	$300	120
1–$1,500 (red)	$3,000	8
1–$3,000	$3,000	8

SECTION 5. **(a) There shall be approximately three million six hundred thousand (3,600,000) instant tickets initially available in instant game number 648.**

(b) The odds of winning a prize in instant game number 648 are approximately 1 in 4.85.

(c) All reorders of tickets for instant game number 648 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 648 is November 30, 2003.**

SECTION 7. **SECTIONS 1 through 6 of this document expire December 31, 2003.**

LSA Document #03-49(E)
Filed with Secretary of State: February 13, 2003, 2:30 p.m.

TITLE 71 INDIANA HORSE RACING COMMISSION

LSA Document #03-52(E)

DIGEST

Amends 71 IAC 3-2-9 concerning placing a horse on the judge's list if there is a question as to the actual trainer of the horse. Amends 71 IAC 3.5-2-9 concerning placing a horse on the steward's list if there is a question as to the actual trainer of the horse. Amends 71 IAC 4-2-4 concerning reimbursement of judges' expenses. Amends 71 IAC 4-2-5 concerning reimbursement of test barn assistants' expenses. Amends 71 IAC 4-3-1 concerning an accident on the track. Amends 71 IAC 4.5-2-4 concerning reimbursement of stewards' expenses. Amends 71 IAC 4.5-2-5 concerning reimbursement of test barn assistants' expenses. Amends 71 IAC 4.5-3-1 concerning an accident on the track. Amends 71 IAC 5.5-4-4 concerning jockey responsibility in wearing colors. Amends 71 IAC 7-1-15 concerning horses ineligible to be entered. Amends 71 IAC 7-1-28 concerning qualifying races. Amends 71 IAC 7.5-1-4 to clarify the coupled entries. Adds 71 IAC 7.5-1-14 concerning current race lines. Amends 71 IAC 7.5-6-1 concerning equipment. Amends 71 IAC 8-1-1 concerning the use of dose syringes. Amends 71 IAC 8-4-1 concerning collection procedures. Adds 71 IAC 8-6-2 concerning the adding of three drugs to prohibited practices based upon the advice of the Association of Racing Commissioner's International. Amends 71 IAC 8.5-1-1 concerning the adding of three drugs to prohibited practices based upon the advice of the Association of Racing Commissioner's International. Amends 71 IAC 8.5-3-1 concerning collection procedures. Amends 71 IAC 8.5-5-2 concerning prohibited practices. Amends 71 IAC 10-2-9 concerning a clarification of the appeal process. Amends 71 IAC 12-2-15 concerning allocation of riverboat gambling admissions tax revenue. Amends 71 IAC 12-2-18 concerning allocation of interstate simulcasting revenue to purses. Repeals 71 IAC 7-1-37. Effective February 21, 2003.

71 IAC 3-2-9
71 IAC 3.5-2-9
71 IAC 4-2-4
71 IAC 4-2-5
71 IAC 4-3-1
71 IAC 4.5-2-4
71 IAC 4.5-2-5
71 IAC 4.5-3-1
71 IAC 5.5-4-4
71 IAC 7-1-15
71 IAC 7-1-28
71 IAC 7-1-37
71 IAC 7.5-1-4
71 IAC 7.5-1-14
71 IAC 7.5-6-1
71 IAC 8-1-1
71 IAC 8-4-1
71 IAC 8-6-2
71 IAC 8.5-1-1
71 IAC 8.5-3-1
71 IAC 8.5-5-2
71 IAC 10-2-9
71 IAC 12-2-15
71 IAC 12-2-18

SECTION 1. 71 IAC 3-2-9 IS AMENDED TO READ AS FOLLOWS:

71 IAC 3-2-9 Judge's list
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 9. (a) The judges shall maintain a judge's list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the race track that may endanger the health and safety of the participants and for the protection of the wagering public. The reasons for a horse to be placed on the judge's list and ordered to qualify shall include, but not be limited to, the following on a fast or good track:

(1) Making a break in a qualifying race.

(2) Making a break in a race following a qualifying race unless finishing 1st, 2nd, or 3rd. Two (2) year old nonwagering purse races for three hundred dollars ($300) or less shall be considered a qualifying race.

(3) Poor performance or failure to go in a qualifying time following a qualifying race.

(4) Poor performance in a qualifying race regardless of going in qualifying time.

(5) Failing to go in qualifying time in two (2) consecutive starts.

(6) Making breaks in two (2) consecutive starts unless finishing 1st, 2nd, or 3rd in one (1) of the two (2).

(7) Being scratched sick or lame in two (2) consecutive programmings or scratched sick or lame from a race following a qualifying race.

(8) Scratched sick or lame, having failed to go in qualifying time in a previous or subsequent start to that scratch.

(9) Scratched sick or lame in a race previous or subsequent to a break line.

(10) Numerous bad lines in its last six (6) starts regardless of being consecutive on finishing 1st, 2nd, or 3rd.

(b) (1) A horse showing a satisfactory line in one (1) of its last two (2) starts or its last start at a pari-mutuel track prior to racing at a county fair track, the county fair lines will not be considered towards its eligibility to return to the pari-mutuel track. Notwithstanding the above satisfactory line, at the pari-mutuel track, must be within its last six (6) programmed lines but within thirty (30) days of the pari-mutuel start (race date to race date).

(2) A horse having not raced at a pari-mutuel track must show a satisfactory charted line in one (1) of its last two (2) county fair starts within the time standards set.

(c) The judges may place a horse on the judge's list when there exists a question as to the exact identification, ~~or~~ ownership, **or trainer** of a horse.

(d) A horse may not be released from the judge's list without permission of the judges. *(Indiana Horse Racing Commission; 71 IAC 3-2-9; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1129; emergency rule filed Apr 9, 1998, 1:18 p.m.: 21 IR 3377; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2097; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2534; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2380)*

SECTION 2. 71 IAC 3.5-2-9 IS AMENDED TO READ AS FOLLOWS:

71 IAC 3.5-2-9 Steward's list
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 9. (a) The stewards shall maintain a steward's list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the race track that may endanger the health or safety of other participants in racing.

(b) The stewards may place a horse on the steward's list when there exists a question as to the exact identification, ~~or~~ ownership, **or trainer** of said horse.

(c) A horse may not be released from the steward's list without permission of the stewards. *(Indiana Horse Racing Commission; 71 IAC 3.5-2-9; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2831, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2380)*

SECTION 3. 71 IAC 4-2-4 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4-2-4 Reimbursement of judges' expenses
Authority: IC 4-31-3-9; IC 4-31-3-11.5
Affected: IC 4-31

Sec. 4. (a) An association shall reimburse the commission for the salaries and reasonable expenses of all judges who serve at the association's track. The reimbursement shall include, but not be limited to, the following:

(1) All salaries, per diem, ~~and~~ fringe benefits, **and expenses, including, but not limited to, unemployment benefits.**

(2) Travel expenses, including lodging for any premeet or postmeet duties as approved by the executive director.

(3) All expenses relating to the recruitment and interviewing of prospective judges.

(4) Other expenses related to subdivisions (1) through (3) as determined by the executive director.

(b) In the event of a meeting of less than sixty (60) days in duration, the association shall provide and pay directly for the reasonable lodging of any judge whose residence is greater than fifty (50) miles from the association's track. The association shall also pay for the lodging and travel expenses of any substitute judge. The location of lodging shall be subject to the approval of the executive director.

(c) The payment or reimbursement of reasonable travel

expenses of judges shall be subject to the travel policies and procedures of the state of Indiana established by the department of administration and approved by the budget agency. *(Indiana Horse Racing Commission; 71 IAC 4-2-4; emergency rule filed May 16, 1994, 4:30 p.m.: 17 IR 2370; errata, 17 IR 2657; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2072; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2380)*

SECTION 4. 71 IAC 4-2-5 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4-2-5 Reimbursement of test barn assistants' expenses
Authority: IC 4-31-3-9; IC 4-31-12-6
Affected: IC 4-31

Sec. 5. An association shall reimburse the commission for the salaries, wages, per diem, fringe benefits, and expenses **(including, but not limited to, unemployment benefits)** of all test barn assistants who serve at the association's track. *(Indiana Horse Racing Commission; 71 IAC 4-2-5; emergency rule filed May 16, 1994, 4:30 p.m.: 17 IR 2370; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2381)*

SECTION 5. 71 IAC 4-3-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4-3-1 Facilities for patrons and licensees
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. (a) An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by federal law.

(b) An association shall provide and maintain adequate restroom facilities for the patrons and licensees.

(c) An association shall provide an adequate supply of free drinking water.

(d) An association shall maintain all facilities on association grounds to ensure the safety and cleanliness of the facilities at all times.

(e) During a race performance, the association shall provide the following:
(1) A first aid room equipped with appropriate equipment.
(2) The services of at least one (1) physician or certified emergency medical technician (EMT).

(f) An association shall provide a properly equipped ambulance, staffed with certified paramedics or EMTs, at any time the race track is open for qualifying and racing. If the ambulance is being used to transport an individual, the association may not conduct a race until the ambulance is replaced.

(g) The ambulance must be parked at a location approved by the commission.

(h) Any driver that falls or is involved in an accident on the track shall be examined by a certified paramedic or emergency medical technician (EMT) employed by or under contract with the association. The driver shall not be permitted to fulfill any future engagement until he or she is approved by said paramedic or EMT.

~~(h)~~ **(i)** An association shall provide adequate office space for the use of the judges and other commission personnel as required by the commission. The location and size of the office space, furnishings, and equipment required under this section must be approved by the commission.

~~(i)~~ **(j)** An association shall provide telephone and communication systems for the use of the commission staff for the performance of their duties within the enclosure. Such system shall be approved by the commission. The payment for all utilities in areas occupied by commission staff within the enclosure shall be the responsibility of the association.

~~(j)~~ **(k)** An association shall promptly post commission notices in places that can be easily viewed by patrons and licensees. *(Indiana Horse Racing Commission; 71 IAC 4-3-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1135; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2838, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2381)*

SECTION 6. 71 IAC 4.5-2-4 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4.5-2-4 Reimbursement of stewards' expenses
Authority: IC 4-31-3-9; IC 4-31-3-11.5
Affected: IC 4-31

Sec. 4. (a) An association shall reimburse the commission for the salaries and reasonable expenses of all stewards who serve at the association's track. The reimbursement shall include, but not be limited to, the following:
(1) All salaries, per diem, ~~and~~ fringe benefits, **and expenses, including, but not limited to, unemployment benefits.**
(2) Travel expenses, including lodging for any premeet or postmeet duties as approved by the executive director.
(3) All expenses relating to the recruitment and interviewing of prospective stewards.
(4) Other expenses related to subdivisions (1) through (3) as determined by the executive director.

(b) In the event of a meeting of less than sixty (60) days in duration, the association shall provide and pay directly for the

reasonable lodging of any steward whose residence is greater than fifty (50) miles from the association's track. The association shall also pay for the lodging and travel expenses of any substitute steward. The location of lodging shall be subject to the approval of the executive director.

(c) The payment or reimbursement of reasonable travel expenses of stewards shall be subject to the travel policies and procedures of the state of Indiana established by the department of administration and approved by the budget agency. *(Indiana Horse Racing Commission; 71 IAC 4.5-2-4; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2841, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2381)*

SECTION 7. 71 IAC 4.5-2-5 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4.5-2-5 Reimbursement of test barn assistants' expenses

Authority: IC 4-31-3-9; IC 4-31-12-6
Affected: IC 4-31

Sec. 5. An association shall reimburse the commission for the salaries, wages, per diem, fringe benefits, and expenses **(including, but not limited to, unemployment benefits)** of all test barn assistants who serve at the association's track. *(Indiana Horse Racing Commission; 71 IAC 4.5-2-5; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2841, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2382)*

SECTION 8. 71 IAC 4.5-3-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4.5-3-1 Facilities for patrons and licensees

Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. (a) An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by federal law.

(b) An association shall provide and maintain adequate rest room facilities for the patrons and licensees.

(c) An association shall provide an adequate supply of free drinking water.

(d) An association shall maintain all facilities on association grounds to ensure the safety and cleanliness of the facilities at all times.

(e) During a race performance, the association shall provide the following:

(1) A first aid room equipped with appropriate equipment.

(2) The services of at least one (1) physician or certified emergency medical technician (EMT).

(f) An association shall provide a properly equipped ambulance, staffed with certified paramedics or EMTs, at any time the race track is open for training or racing. If the ambulance is being used to transport an individual, the association may not conduct a race until the ambulance is replaced.

(g) The ambulance must be positioned at a location approved by the commission.

(h) Any jockey that falls or is involved in an accident on the track shall be examined by a certified paramedic or emergency medical technician (EMT) employed by or under contract with the association. The jockey shall not be permitted to fulfill any future engagement until he or she is approved by said paramedic or EMT.

~~(h)~~ **(i)** An association shall provide adequate office space for the use of the stewards and other commission personnel as required by the commission. The location and size of the office space, furnishings, and equipment required under this section must be approved by the commission.

~~(i)~~ **(j)** An association shall provide telephone and communication systems for the use of the commission staff for the performance of their duties within the enclosure. Such system shall be approved by the commission. The payment for all utilities in areas occupied by commission staff within the enclosure shall be the responsibility of the association.

~~(j)~~ **(k)** An association shall promptly post commission notices in places that can be easily viewed by patrons and licensees. *(Indiana Horse Racing Commission; 71 IAC 4.5-3-1; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2842, eff Jul 1, 1995; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3403; emergency rule filed May 20, 1996, 10:00 a.m.: 19 IR 2890; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2382)*

SECTION 9. 71 IAC 5.5-4-4 IS AMENDED TO READ AS FOLLOWS:

71 IAC 5.5-4-4 Jockey responsibility

Authority: IC 4-31-6-2
Affected: IC 4-31

Sec. 4. (a) A jockey shall give a best effort during a race, and each horse shall be ridden to win. A jockey shall not ease up on or coast to the finish, without reasonable cause, even if the horse has no apparent chance to win prize money.

(b) A jockey shall not have a valet attendant except one provided and compensated by the association.

(c) No person other than the licensed contract employer or a

licensed jockey agent, may make riding arrangements for a rider, except that a jockey not represented by a jockey agent may make the jockey's own riding engagements.

(d) A jockey shall have no more than one (1) jockey agent.

(e) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the jockey agent's authority.

(f) A jockey is required to have their colors (silks) and rain jackets tucked into their pants at all times while visible to the public. *(Indiana Horse Racing Commission; 71 IAC 5.5-4-4; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2858, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2382)*

SECTION 10. 71 IAC 7-1-15 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-1-15 Horses ineligible to be entered
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 15. **(a)** An owner or trainer shall not enter or start a horse that:
(1) has not been qualified or is on the judge's **or vet's** list;
(2) is wearing a trachea tube or has a hole in its throat for a trachea tube;
(3) has been nerved; or
(4) has impaired eyesight in both eyes.

(b) A horse drawn into a race that is on the judge's or vet's list shall be scratched. *(Indiana Horse Racing Commission; 71 IAC 7-1-15; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1153; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2383)*

SECTION 11. 71 IAC 7-1-28 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-1-28 Qualifying races
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 28. Declarations for qualifying races shall be governed by the following:
(1) A horse that has not raced previously at the gait chosen must go a qualifying race under the supervision of the judges and acquire at least one (1) charted line within the qualifying standards of the track.
(2) A horse that does not show a charted line within its last six (6) starts must go a qualifying race within the time standards of the track.
(3) A horse that does not meet the time qualifying standards in one (1) of its last two (2) starts must qualify.
(4) Horses racing with or without hopples for the first time must qualify.
(5) When a horse is used for the sole purpose of qualifying a driver, that horse must go in qualifying time or be placed on the list to requalify, and the race must be charted.
(6) If a horse takes a win record in a qualifying race, that record must be prefaced with a "Q". The record will not be considered official unless the horse is post race tested (urine and blood).
(7) The judges may permit free-for-all or invitational class horses to go a timed workout consistent with the time it will race in competition in place of a qualifying race.
(8) If a qualified horse is entered in a qualifier, that qualifier will not be considered if the horse fails to qualify. Only one (1) such failed qualifier will be permitted.
(Indiana Horse Racing Commission; 71 IAC 7-1-28; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1155; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2406; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2536; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2383)

SECTION 12. 71 IAC 7.5-1-4 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7.5-1-4 Coupled entries
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 4. (a) Two (2) or more horses which are entered in a race shall be joined as a mutuel and single betting interest if they are owned or leased in whole or in part by the same owner. ~~or are trained by a trainer who owns or leases any interest in any of the other horses in the race.~~ The association, with the permission of the stewards, may uncouple horses trained by the same trainer but owned entirely by different owners. ~~provided that the trainer does not hold an ownership interest in either horse.~~ The uncoupling of such horses shall be prohibited in trifecta races.

(b) No more than two (2) horses having common ties through ownership or training may be entered in an overnight race. Under no circumstances may two (2) horses having common ties of ownership start to the exclusion of a single entry. Preference for horses with the same trainer, but having no common ties of ownership, will be determined by the conditions of the race and/or preference date and may exclude a single entry.

(c) A trainer may not train for another trainer licensed in the state of Indiana.*(Indiana Horse Racing Commission; 71 IAC 7.5-1-4; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2865, eff Jul 1, 1995; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3406; emergency rule filed May 20, 1996, 10:00 a.m.: 19 IR 2892; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2780; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2383)*

SECTION 13. 71 IAC 7.5-1-14 IS ADDED TO READ AS FOLLOWS:

71 IAC 7.5-1-14 Current race lines
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 14. (a) Current race lines, including last start, must be available at scratch time or the horse will be scratched.

(b) It shall be the trainer's responsibility to inform the racing office at entry time of a possible missing line. Also, the trainer shall be responsible to supply the same information to the judges at scratch time.

(c) Scratch time is established by the association.

(d) If, after scratch time, a horse drawn into race at an Indiana pari-mutuel track participates in any other race, that horse shall be scratched. *(Indiana Horse Racing Commission; 71 IAC 7.5-1-14; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2384)*

SECTION 14. 71 IAC 7.5-6-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7.5-6-1 Equipment
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. (a) No whip shall be used unless it has affixed to the end of it a looped leather popper not less than one and one-quarter (13) *[sic.]* inches in width, and not over three (3) inches in length, and be feathered above the popper with not less than three (3) rows of leather feathers, each feather not less than one (1) inch in length. No whip shall exceed thirty-one (31) inches in length. All whips are subject to inspection and approval by the stewards.

(b) No bridle shall exceed two (2) pounds.

(c) A horse's tongue may be tied down with clean bandages, gauze, or a tongue strap.

(d) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter.

(e) The use of Gelocast and/or like materials as a racing bandage, or the use of Gelocast and/or like materials in conjunction with traditional materials to form a racing bandage is prohibited.

(f) Any nontraditional material incorporated into a racing bandage must be approved by the commission veterinarian.

~~(g) The association shall designate in the official program all horses that are to be racing with a nasal strip. It shall be the responsibility of the trainer to report at time of entry if his or her horse will be racing with a nasal strip.~~ *(Indiana Horse Racing Commission; 71 IAC 7.5-6-1; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2870, eff Jul 1, 1995; emergency rule filed Jun 22, 1998, 5:13 p.m.: 21 IR 4234; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2781; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2384)*

SECTION 15. 71 IAC 8-1-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 8-1-1 Medication
Authority: IC 4-31-3-9
Affected: IC 4-31-12

Sec. 1. (a) No horse participating in a race or entered in a race shall carry in its body any foreign substance as defined in 71 IAC 1, except as provided for in this rule.

(b) No substance, foreign or otherwise, shall be administered to a horse entered to race by:
(1) injection;
(2) jugging;
~~(3) dose syringing;~~
~~(4)~~ **(3)** oral administration;
~~(5)~~ **(4)** tube;
~~(6)~~ **(5)** rectal infusion or suppository;
~~(7)~~ **(6)** inhalation; or
~~(8)~~ **(7)** any other means;
within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide as provided for in this rule. The prohibitions in this section include, but are not limited to, injection or jugging of vitamins, electrolyte solutions, and amino acid solutions.

(c) Substances or metabolites thereof which are contained in equine feed or feed supplements that do not contain pharmacodynamic or chemotherapeutic agents are not considered foreign substances if consumed in the course of normal dietary intake (eating and drinking).

(d) The prohibition in subsection (b) notwithstanding, the use of nebulizers are permitted on an entered horse within twenty-four (24) hours of the scheduled post time for the horse's race until the horse's arrival in the paddock provided their use is restricted to water and saline solutions only.

(e) Topical dressings such as leg paints, liniments, ointments, salves, hoof dressings, and antiseptics which do not contain anesthetics or a pharmacodynamic or a chemotherapeutic agent may be administered at any time prior to a horse's arrival in the paddock. Products containing "caine" derivatives or dimethylsulfoxide (DMSO) are foreign substances and are prohibited. *(Indiana Horse Racing Commission; 71 IAC 8-1-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1168; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2078;*

emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2410; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2384)

SECTION 16. 71 IAC 8-4-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 8-4-1 Collection procedures
Authority: IC 4-31-3-9
Affected: IC 4-31-12

Sec. 1. (a) All collection procedures shall be done in accordance with chain of custody guidelines.

(b) Before sending a sample from a horse to a testing laboratory, the commission veterinarian or a designated employee shall divide the specimen into two (2) parts.

(c) The commission veterinarian shall **attempt to** collect a minimum of fifty (50) milliliters of urine. ~~which shall be divided into two (2) portions, one (1) of which shall be forwarded to the primary laboratory.~~ The primary testing laboratory shall receive a minimum of fifty (50) milliliters of urine. The commission veterinarian shall collect a minimum of thirty (30) milliliters of blood which shall be divided into two (2) portions, ~~both~~ **one (1)** of which shall be forwarded to the primary laboratory. A urine specimen shall not be split if less than fifty (50) milliliters is collected from horses. In such instances, the commission is entitled to submit the entire urine specimen for testing or detain the horse an adequate amount of time until it can be obtained. If an insufficient volume of urine is obtained, the trainer and owner are not entitled to a split sample.

(d) If the split sample testing laboratory determines that there is insufficient sample volume to make a specific identification of the sample contents, or if an act of God, power failure, accident, labor strike, or any other event beyond the control of the commission or its representatives prevents the split sample from being tested, then the results of tests performed by the primary laboratory shall be considered prima facie evidence of the condition of the horse.

(e) The commission veterinarian shall retain the part of the urine specimen **and the part of the blood specimen** that is not sent to the primary laboratory. ~~The primary laboratory shall retain a portion of the blood specimen on all positive tests.~~

(f) If the retained part of a specimen is sent for testing, the commission veterinarian ~~or primary laboratory~~ shall arrange for the transportation of the specimen in a manner that ensures the integrity of the sample.

(g) ~~Upon a finding by the primary laboratory of a positive test on a blood sample, the primary laboratory shall handle the split sample in such a manner that hemolysis is minimized.~~ Blood samples shall be mixed and centrifuged and the plasma separated and stored frozen. *(Indiana Horse Racing Commission; 71 IAC 8-4-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1172; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1504; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2385)*

SECTION 17. 71 IAC 8-6-2 IS ADDED TO READ AS FOLLOWS:

71 IAC 8-6-2 Prohibited practices
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. (a) The possession and/or use of a drug, substance, or medication, specified below, on the premises of a facility under the jurisdiction of the commission is prohibited. These drugs or substances include those which a recognized analytical method has not been developed to detect and confirm the administration of such substance, or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider, or the use of which may adversely affect the integrity of racing:

(1) Erythropoietin.
(2) Darbepoietin.
(3) Oxyglobin.
(4) Hemopure.

(b) The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States is prohibited. *(Indiana Horse Racing Commission; 71 IAC 8-6-2; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2385)*

SECTION 18. 71 IAC 8.5-1-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 8.5-1-1 Medication
Authority: IC 4-31-3-9
Affected: IC 4-31-12

Sec. 1. (a) No horse participating in a race or entered in a race shall carry in its body any foreign substance as defined in 71 IAC 1.5, except as provided for in this rule.

(b) No substance, foreign or otherwise, shall be administered to a horse entered to race by:

(1) injection;
(2) jugging;
~~(3) dose syringing;~~
~~(4)~~ **(3)** oral administration;
~~(5)~~ **(4)** tube;
~~(6)~~ **(5)** rectal infusion or suppository;
~~(7)~~ **(6)** inhalation; or
~~(8)~~ **(7)** any other means;

within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide as provided for in this rule. The prohibitions in this section include, but are not limited to, injection or jugging of vitamins, electrolyte solutions, and amino acid solutions.

(c) Substances or metabolites thereof which are contained in equine feed or feed supplements that do not contain pharmacodynamic or chemotherapeutic agents are not considered foreign substances if consumed in the course of normal dietary intake (eating and drinking).

(d) The prohibition in subsection (b) notwithstanding, the use of nebulizers are permitted on an entered horse within twenty-four (24) hours of the scheduled post time for the horse's race until the horse's arrival in the paddock provided their use is restricted to water and saline solutions only.

(e) Topical dressings such as leg paints, liniments, ointments, salves, hoof dressings, and antiseptics, which do not contain anesthetics or a pharmacodynamic or a chemotherapeutic agent, may be administered at any time prior to a horse's arrival in the paddock. Products containing "caine" derivatives or dimethylsulfoxide (DMSO) are foreign substances and are prohibited. *(Indiana Horse Racing Commission; 71 IAC 8.5-1-1; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2880, eff Jul 1, 1995; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3413; errata filed Mar 5, 1998, 1:46 p.m.: 21 IR 2392; emergency rule filed Feb 13, 1998 10:00 a.m.: 21 IR 2419; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2385)*

SECTION 19. 71 IAC 8.5-3-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 8.5-3-1 Collection procedures
Authority: IC 4-31-3-9
Affected: IC 4-31-12

Sec. 1. (a) All collection procedures shall be done in accordance with chain of custody guidelines.

(b) Before sending a sample from a horse to a testing laboratory, the commission veterinarian or a designated employee shall divide the specimen into two (2) parts.

(c) The commission veterinarian shall **attempt to** collect a minimum of fifty (50) milliliters of urine. ~~which shall be divided into two (2) portions, one (1) of which shall be forwarded to the primary laboratory.~~ The primary testing laboratory shall receive a minimum of fifty (50) milliliters of urine. The commission veterinarian shall collect a minimum of thirty (30) milliliters of blood which shall be divided into two (2) portions, ~~both~~ **one (1)** of which shall be forwarded to the primary laboratory. A urine specimen shall not be split if less than fifty (50) milliliters is collected from horses. In such instances, the commission is entitled to submit the entire urine specimen for testing or detain the horse an adequate amount of time until it can be obtained. If an insufficient volume of urine is obtained, the trainer and owner are not entitled to a split sample.

(d) If the split sample testing laboratory determines that there is insufficient sample volume to make a specific identification of the sample contents, or if an act of God, power failure, accident, labor strike, or any other event beyond the control of the commission or its representatives prevents the split sample from being tested, then the results of tests performed by the primary laboratory shall be considered prima facie evidence of the condition of the horse.

(e) The commission veterinarian shall retain the part of the urine and blood specimen that is not sent to the primary laboratory.

(f) If the retained part of a specimen is sent for testing, the commission veterinarian shall arrange for the transportation of the specimen in a manner that ensures the integrity of the sample.

(g) Blood samples shall be centrifuged and stored frozen. *(Indiana Horse Racing Commission; 71 IAC 8.5-3-1; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2883, eff Jul 1, 1995; emergency rule filed Aug 23, 2001, 9:58 a.m.: 25 IR 121; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2386)*

SECTION 20. 71 IAC 8.5-5-2, AS ADDED AT 26 IR 57, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

71 IAC 8.5-5-2 Prohibited practices
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. (a) The possession and/or use of a drug, substance, or medication, specified below, on the premises of a facility under the jurisdiction of the commission is prohibited. These drugs or substances include those which a recognized analytical method has not been developed to detect and confirm the administration of such substance, or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider, or the use of which may adversely affect the integrity of racing:

(1) Erythropoietin.
(2) Darbepoietin.
(3) Oxyglobin.
(4) Hemopure.

(b) The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States is prohibited. *(Indiana Horse Racing Commis-*

sion; 71 IAC 8.5-5-2; emergency rule filed Aug 20, 2002, 3:00 p.m.: 26 IR 57; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2386)

SECTION 21. 71 IAC 10-2-9 IS AMENDED TO READ AS FOLLOWS:

71 IAC 10-2-9 Appeals
Authority: IC 4-31-3-9
Affected: IC 4-31-13

Sec. 9. (a) A person who has been aggrieved or adversely affected by a ruling ~~or decision~~ of the judges may appeal to the commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b) An appeal under this section must be filed not later than fifteen (15) days after the ruling or decision is served upon the person. The appeal must be filed with the commission. The appeal must be accompanied by a deposit of five hundred dollars ($500) in the form of a cashier's check or money order to defray the costs of appeal. The costs of appeal shall consist of the cost of the court reporter, the cost of the transcript required for the appeal, and the cost of the administrative law judge. If a person is wholly or partially successful in prosecuting an appeal and a final order is entered on their behalf, the costs of appeal will be assessed against the commission. In all other instances, the costs of appeal will be assessed against the person bringing the appeal. The deposit provided for by this subsection will be applied toward any such assessment. To the extent that such an assessment is less than the amount of the deposit, that difference shall be refunded to the person initiating the appeal. To the extent that the assessment exceeds the amount of the deposit, the person initiating the appeal is responsible for remitting the balance to the commission within ten (10) days of such a request after the issuance of a final order.

(c) An appeal must be in writing on a form prescribed by the commission. The appeal must include:
(1) the name, address, telephone number, and signature of the person making the appeal; and
(2) a statement of the basis for the appeal, identified with reasonable particularity.

(d) On notification by the commission that an appeal has been filed, the judges shall forward to the commission the record of the proceeding on which the appeal is based.

(e) If a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, payment of the fine is not due until seven (7) days after a final determination or order has been entered which supports the imposition of such a sanction.

(f) A decision by the judges regarding **a disqualification involving** the running of the race **that does not result in a ruling** is final and may not be appealed. *(Indiana Horse Racing Commission; 71 IAC 10-2-9; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1200; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3415; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2427; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2110; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2387)*

SECTION 22. 71 IAC 12-2-15, AS AMENDED AT 26 IR 394, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

71 IAC 12-2-15 Allocation of riverboat gambling admissions tax revenue
Authority: IC 4-31-3-9; IC 4-33-12-6
Affected: IC 4-31-11-10

Sec. 15. (a) An association must be racing live in order to be eligible to receive distributions of riverboat gambling admissions tax revenue pursuant to this section.

(b) The commission shall allocate the riverboat gambling admissions tax revenue distributed to the commission by the treasurer of state pursuant to IC 4-33-12-6 as follows:
(1) Twenty percent (20%) divided between the standardbred breed development fund, thoroughbred breed development fund, and quarter horse breed development fund as established by the commission under IC 4-31-11-10 as follows:
(A) Forty-eight (48%) to standardbred breed development.
(B) Forty-eight (48%) to thoroughbred breed development; and
(C) Four (4%) to quarter horse breed development.
(2) Forty percent (40%) to purses for the benefit of horsemen, which shall be divided ~~equally between the~~ **forty-nine percent (49%) to** standardbred ~~purse account and the~~ **purses, forty-nine percent (49%) to** thoroughbred ~~purse account after the first two hundred thousand dollars ($200,000) is allocated to purses for races for quarter horses.~~ **purses, and two percent (2%) to quarter horse purses.** If more than one (1) track races a *[sic.]* ~~specific breed,~~ **standardbreds or thoroughbreds,** purses for that breed shall be divided to the purse accounts of the tracks in question proportionally based upon the number of live race dates for that breed. **If more than one (1) track races quarter horses, purses for that breed shall be divided to the purse accounts of the tracks in question proportionally based upon the number of live races for that breed.** To the extent practical, the revenue received under this subsection shall be distributed as purses for the benefit of horsemen in the year in which the revenue is received.
(3) In a year in which only one (1) association conducts live pari-mutuel racing, forty percent (40%) shall go to the association after the first five hundred thousand ($500,000) is distributed as follows:
(A) Two hundred thousand ($200,000) to the thoroughbred development fund.

(B) Two hundred thousand ($200,000) to the standardbred development fund.

(C) One hundred thousand ($100,000) to the quarter horse development fund.

Such revenue may be used by the association for purses, promotions, and routine operations of the race track. Provided, however, that such monies shall not be used for long term capital investment or construction.

(4) In a year in which more than one (1) association conducts live pari-mutuel racing, forty percent (40%) to the associations, which shall be divided proportionally based on the total purses, irrespective of any breed considerations, generated by each association's track and satellite facilities from the following sources:

(A) Live handle at track.

(B) Live handle at satellite facilities.

(C) Interstate simulcasting receiving handle.

(D) Interstate simulcasting sending handle.

Notwithstanding the above formula, in calendar year 2003, the forty percent (40%) shall be divided equally between associations if each association races a minimum of twenty (20) days each of both thoroughbred and standardbred. In calendar year 2004, one-half (½) of the forty percent (40%) shall be divided equally between associations if each association races an extended race meet of both thoroughbred and standardbred. The other half of the forty percent (40%) shall be divided proportionally based on total purses as described above.

(c) Subdivision [Subsection] (b)(4) expires on December 31, 2004. *(Indiana Horse Racing Commission; 71 IAC 12-2-15; emergency rule filed Mar 9, 1994, 2:50 p.m.: 17 IR 1629; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2090; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2423; emergency rule filed Dec 22, 1999, 4:13 p.m.: 23 IR 1113, eff Dec 15, 1999 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-269(E) was filed with the secretary of state on December 22, 1999]; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Nov 29, 2001, 1:20 p.m.: 25 IR 1189; emergency rule filed Sep 27, 2002, 2:31 p.m.: 26 IR 394; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2387)*

SECTION 23. 71 IAC 12-2-18 IS AMENDED TO READ AS FOLLOWS:

71 IAC 12-2-18 Allocation of interstate simulcasting revenue to purses

Authority: IC 4-31-3-9
Affected: IC 4-31-9-2

Sec. 18. **(a)** Revenue for purses generated from the simulcasting of out-of-state signals into the state shall be divided and applied ~~equally~~ **forty-nine percent (49%)** to standardbred purses, ~~and~~ **forty-nine percent (49%) to** thoroughbred purses, **and two percent (2%) to quarter horse purses** statewide. This division shall apply irrespective of the number of tracks, the breed of the incoming signal, and the number of live race dates conducted for either breed. If more than one (1) track races a specific breed, purses for that breed shall be divided to the purse accounts of the tracks in question proportionally based upon the number of live race dates for that breed. **The utilization of all monies transferred between tracks pursuant to this rule shall be in accordance with guidelines approved by the commission.**

(b) Effective July 1, 2003, interstate simulcasting revenue generated for purses from simulcasting of out-of-state signals into the state by an association that races more than one (1) breed of horse shall be allocated to the purse accounts at that association as follows:

(1) Forty-nine percent (49%) to standardbreds.

(2) Forty-nine percent (49%) to thoroughbreds.

(3) Two percent (2%) to quarter horses.

(Indiana Horse Racing Commission; 71 IAC 12-2-18; emergency rule filed Mar 9, 1994, 2:50 p.m.: 17 IR 1630; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2423; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Nov 29, 2001, 1:20 p.m.: 25 IR 1190; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2388)

SECTION 24. 71 IAC 7-1-37 IS REPEALED.

LSA Document #03-52(E)
Filed with Secretary of State: February 21, 2003, 4:15 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-28(E)

DIGEST

Temporarily modifies 312 IAC 5 that governs the operation of watercraft on public waters. Adds the portion of the Wabash River that forms a border with Illinois and the Great Miami River to "waters of concurrent jurisdiction". Requires children under age 13 to wear personal flotation devices (sometimes called "life preservers") on waters of concurrent jurisdiction in order to conform with U.S. Coast Guard regulations. Effective March 1, 2003.

SECTION 1. **Notwithstanding 312 IAC 5-2-47, "waters of concurrent jurisdiction" refers to the following waters within Indiana:**

(1) Lake Michigan.

(2) Ohio River.

(3) Wabash River where it forms the boundary between Indiana and Illinois.

(4) Great Miami River.

SECTION 2. **A person must not use a recreational watercraft on waters of concurrent jurisdiction unless each child on-board under thirteen (13) years old is wearing an appropriate personal flotation device approved by the U.S. Coast Guard, except where:**

(1) the child is below deck;

(2) the child is in an enclosed cabin; or

(3) the watercraft is docked or at anchor.

LSA Document #03-28(E)
Filed with Secretary of State: February 10, 2003, 3:26 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-51(E)

DIGEST

Temporarily modifies 312 IAC 9-10-4 to govern game breeder licenses. Modifications prohibit the release of white-tailed deer into the wild and sets forth penalties for noncompliance. In addition, new game breeder licenses for white-tailed deer will not be issued after the effective date of this document. This document does not prohibit the renewal of an existing license. Authority: IC 14-10-2-5. Effective February 20, 2003.

SECTION 1. **(a) Notwithstanding 312 IAC 9-10-4, this document governs individuals issued a game breeder license.**

(b) An application for a license as a game breeder of one (1) or more species of wild animal shall be made on a departmental form. A new game breeder license will not be issued for the possession of white-tailed deer, but a valid existing license for the possession of white-tailed deer may be renewed.

(c) An application for a permit under this SECTION must be made within five (5) days after the acquisition of an animal within Indiana or within five (5) days after the importation of an animal into Indiana, but after the cages or other enclosures are readied for habitation. Each cage or enclosure will be inspected by a conservation officer before a permit may be issued. Documentation that establishes lawful acquisition or ownership must accompany any transportation of white-tailed deer.

(d) A license holder may add a species to a game breeder operation other than those identified in the application upon written notification to the division within five (5) days of acquisition of the new species.

(e) Each animal possessed under this SECTION must be lawfully acquired. A receipted invoice, bill of lading, or other satisfactory evidence of lawful acquisition shall be presented for inspection upon the request of a conservation officer. Game or furbearing mammals or game birds, other than wild turkeys, lawfully taken in season may be retained alive after the close of the season.

(f) A wild animal must be confined in a cage or other enclosure which makes escape of the animal unlikely. The cage or enclosure shall be large enough to provide the wild animal with ample space for exercise and to avoid overcrowding. Rainproof dens, nest boxes, shelters, shade, and bedding shall be provided as required for the comfort of the particular species of animal. Each animal shall be handled in a sanitary and humane manner. The cages or other enclosures must be made available upon request for inspection by a conservation officer.

(g) A diseased wild animal possessed under this SECTION shall not be released in the wild. No white-tailed deer may be released into the wild. A license holder must report the escape of any white-tailed deer to a conservation officer within twenty-four (24) hours.

(h) A license holder must comply with IC 15-2.1 and 345 IAC.

(i) A game breeder shall record on a bill of sale or other suitable record a transaction by which a wild animal is sold, traded, or given to another person. A copy of the record shall be kept on the premises of the game breeder for at least two (2) years after the transaction and must be presented to a conservation officer upon request.

(j) A license may be suspended, denied, or revoked under IC 4-21.5 if the license holder fails to comply with any of the following:

(1) A license issued under this document.

(2) IC 14-22-20.

(3) IC 15-2.1 and 345 IAC.

SECTION 2. **LSA Document #02-190(E), printed at 25 IR 3773, is repealed.**

SECTION 3. **SECTIONS 1 and 2 of this document expire February 1, 2004.**

LSA Document #03-51(E)
Filed with Secretary of State: February 20, 2003, 8:52 a.m.

Notice of Rule Adoption

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

LSA Document #02-218

Under IC 12-8-3-4.4, LSA Document #02-218, printed at 26 IR 519, which amends 440 IAC 4-3-1 to delete exemptions from mandatory services for community mental health centers and 440 IAC 4.1-2-1, 440 IAC 4.1-2-4, 440 IAC 4.1-2-5, and 440 IAC 4.1-2-9 to require an applicant to be assigned an exclusive geographic primary service area before it is certified as a community mental health center, and to make the maintenance of financial viability a requirement of certification; adds 440 IAC 4.1-3 to establish exclusive geographic primary service areas for community mental health centers, including criteria and procedures to justify a change of an assignment of a community mental health center to a primary service area. The rule that was adopted is the same as the proposed rule that was published in the Indiana Register on November 1, 2002.

Change in Notice of Public Hearing

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #01-407

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of final adoption of LSA Document #01-407, printed at 26 IR 1968, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on ***May 7, 2003*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 6-1-10.1 and 326 IAC 6-1-10.2.*

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

Additional information regarding this action may be obtained from Chris Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027, press 0, and ask for extension 3-6868 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

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

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

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

Copies of these rules are now on file with the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

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

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #02-54

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of final adoption of LSA Document #02-54, printed at 26 IR 1158, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on ***May 7, 2003*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 10-3 and 326 IAC 10-4.*

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

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027, press 0, and ask for extension 2-8229 (in Indiana). If the date of this hearing is changed it will be noticed in the Change of Notice section of the Indiana Register. Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

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

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

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

Change in Notice of Public Hearing

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #01-95

The Water Pollution Control Board gives notice that the date of the public hearing for consideration of final adoption of LSA Document #01-95, printed at 26 IR 1604, has been rescheduled. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on ***May 14, 2003*** *at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on proposed amendments and new rules concerning storm water run-off associated with construction activity and storm water discharges associated with industrial activity.*

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

Technical information regarding this action can be obtained from Lori Gates, Wet Weather Section, Office of Water Quality, (317) 233-6725 or (800) 451-6027 (in Indiana). Additional information regarding this action can be obtained from Kiran Verma, Rules Section, Office of Water Quality, (317) 234-0986 or (800) 451-6027 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

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

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

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

Copies of these rules are now on file with the Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor West, Room 1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tim Method
Deputy Commissioner
Indiana Department of Environmental Management

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #00-185

The Solid Waste Management Board gives notice that the date of the public hearing for consideration of final adoption of LSA Document #00-185, printed at 26 IR 430, has been scheduled. The Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on ***April 15, 2003*** *at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on amendments to 329 IAC 10, the Solid Waste Land Disposal Facility rules.*

The purpose of this hearing is to receive comments from the public prior to the final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Pam Koons, Rules, Planning, and Outreach Section, Office of Land Quality, (317)232-8899 or in Indiana (800) 451-6027, press 0, and ask for extension 2-8899. If the date of this hearing is changed it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register.

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

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

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

Copies of these rules are now on file at the Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana and are open for public inspection.

Bruce Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

LSA Document #03-58

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

OVERVIEW: Amends 105 IAC 12 concerning the procurement of supplies and services. The rule will add sections concerning the following: the definitions of "offer" and "offeror"; "public inspection" of the contract files and what is excluded from public inspection; "sanctions" for providing false information to the department; "United States manufactured product definition, policy, certification, and enforcement"; and the requirements concerning the use of "steel products." The rule will also modify sections, including, but not limited to, the following: "withdrawal of bids or proposals"; the cancellation of any bids or proposals; communications with the offeror who submit proposals for a contract; and added language to several sections concerning what is subject to public inspection. The rule will also make changes to clarify sections and make technical changes. Comments on the proposed rule may be sent to the Indiana Department of Transportation, 100 North Senate Avenue, Room 730, Indianapolis, Indiana 46204 or by electronic mail to tgiller@indot.state.in.us. Statutory authority: IC 8-23-2-6.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-50

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

OVERVIEW: Would amend 312 IAC 8 that governs public use of DNR properties to make substantive and technical changes. The standards governing the use of firearms and hunting would be restructured and simplified. Service animals would be distinguished from pets, and parallel regulatory modifications would be made. In addition to a property manager, any other authorized DNR employee could allow a person to stay in a campground, for medical reasons, for longer than the ordinary time frames. A clarification would be made to when swimming is authorized on lakes located within DNR properties. Would amend 312 IAC 9 to provide that wild animals cannot be hunted or chased at a state historic site. Questions or comments may be sent to the following address: Division of Hearings, Natural Resources Commission, 402 West Washington Street, Room W272, Indianapolis, Indiana 46204. As alternatives, questions or comments can be made by telephone at (317)233-3322 or by e-mail at slucas@dnr.state.in.us. Statutory authority: IC 14-10-2-4; IC 14-11-2-1.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-61

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 405 IAC 1-17 to modify the reimbursement methodology for state-owned intermediate care facilities for the mentally retarded (ICFs/MR) to apply retrospective rate-setting principles with an annual cost-settlement; remove the ten percent (10%) reduction in current rate if there is a delay in filing of the annual financial report; change the rate effective date from the first day of the fourth month following the provider's reporting year end to the first day of the month following the providers reporting year end; remove the market area limitation, private pay rate limitation and requested rate limitation; remove the requirement to base forecasted data on a minimum eighty percent (80%) occupancy; remove the nine (9) month base rate reporting requirement; and remove the central office financial reporting requirements. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-66

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 405 IAC 5 to add assertive community treatment intensive case management as a Medicaid reimbursable service; defines the population eligible for this targeted case management service; requires and defines prior authorization requirements for this targeted case management service. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-75

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 405 IAC 1-10.5-3 to remove base year inpatient rate calculations for Medicaid-enrolled hospitals; permits the office of Medicaid policy and planning to include observation care and emergency costs in relative weight calculations; removes annual inflationary adjustment to inpatient hospital rates; and adds requirements to the medical education rate calculation. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-76

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Adds provisions to 405 IAC 5 to set forth Medicaid coverage criteria for child welfare rehabilitation treatment services rendered to Medicaid eligible children in residential treatment facilities licensed by the division of family and children. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-3.

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

LSA Document #03-57

Under IC 4-22-2-23, the Division of Mental Health and Addiction intends to adopt a rule concerning the following:

OVERVIEW: Adds 440 IAC 5.2 to establish standards for the certification and operation of assertive community treatment teams by community mental health centers. Statutory authority: IC 12-8-8-4; IC 12-21-2-8; IC 12-21-5-1.5.

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #03-74

Under IC 4-22-2-23, the Division of Family and Children intends to adopt a rule concerning the following:

OVERVIEW: Adds 470 IAC 3-16 to establish procedures and standards for certification as a residential treatment center, for provision of inpatient community mental health rehabilitation services to Medicaid eligible individuals, of a child caring institution or group home licensed by the division under 470 IAC 3-11, 470 IAC 3-12, 470 IAC 3-13, 470 IAC 3-14, or 470 IAC 3-15. Adds 470 IAC 3-17 to establish procedures and standards for certification as a residential treatment center, for provision of outpatient community mental health rehabilitation services to Medicaid eligible individuals, of a child placing agency licensed by the division under 470 IAC 3-2. Statutory authority: IC 12-13-5-3; IC 12-17.4-2-4.

TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #03-63

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

OVERVIEW: Adds 515 IAC 10 to provide certain requirements and procedures for the issuance by the professional standards board of the workplace specialist licenses and other matters concerning the workplace specialist license. Public comments are invited and may be directed to Marie Theobald, Executive Director, Professional Standards Board, 101 West Ohio Street, Indianapolis, Indiana 46204. Statutory authority: IC 20-1-1.4-7.

TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #03-64

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

OVERVIEW: Adds 515 IAC 11 to provide various standards and other requirements that must be met in connection with licenses issued by the professional standards board. Public comments are invited and may be directed to Marie Theobald, Executive Director, Professional Standards Board, 101 West Ohio Street, Indianapolis, Indiana 46204. Statutory authority: IC 20-1-1.4-7.

TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #03-65

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

OVERVIEW: Adds 515 IAC 12 to provide certain requirements and procedures for the issuance by the professional standards board of the accomplished practitioner teacher license. Public comments are invited and may be directed to

Marie Theobald, Executive Director, Professional Standards Board, 101 West Ohio Street, Indianapolis, Indiana 46204. Statutory authority: IC 20-1-1.4-7.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #03-71

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

OVERVIEW: To make numerous substantive and clarifying changes to the 2001 Indiana Residential Code, 675 IAC 14-4.2. To amend provisions of the 2002 Indiana Electrical Code, 675 IAC 17-1.6, so as not to be in conflict with the electrical provisions of the Indiana Residential Code. To delete Class 2 structures from being regulated by the 1992 Indiana Energy Conservation Code, 675 IAC 19-3, because that topic will be regulated by the Indiana Residential Code. Public comments are invited and may be directed to the Department of Fire and Building Services, ATTENTION: Technical Services, Indiana Government Center-South, 402 West Washington Street, Room W246, Indianapolis, Indiana 46204 or by e-mail at jweesner@sema.state.in.us. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #03-72

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

OVERVIEW: To amend 675 IAC 21, the safety code for elevators, escalators, manlifts, and hoists, to make substantive and technical changes, including changes to reference updated standards. To adopt the 2002 addenda, ANSI/ASME A17.1a, Safety Code for Elevators and Escalators, dated October 4, 2002, with amendments, in 675 IAC 21-3. To adopt the 2001 addenda, ANSI/ASME A18.1b, Safety Standard for Platform and Stairway Chair Lifts, dated December 11, 2001, with amendments in 675 IAC 21-8. To adopt the 1999 and 2001 addenda, ANSI/ASME A90.1a, and A90.1b, Safety Standard for Belt Manlifts, dated August 16, 1999, and January 23, 2001, respectively, with amendments, in 675 IAC 21-5. To adopt ASME QEI-1, 2001 Edition, Standard for Qualification of Elevator Inspectors, with amendments, in 675 IAC 21. To adopt ASCE 21, Part 1, 1996; Part 2, 1998; and Part 3, 2000, Standard for Automated People Movers, with amendments, in 675 IAC 21. Public comments are invited and may be directed to the Department of Fire and Building Services, ATTENTION: Technical Services, Indiana Government Center-South, 402 West Washington Street, Room W246, Indianapolis, Indiana 46204 or by e-mail at jweesner@sema.state.in.us. Statutory authority: IC 22-13-2-2; IC 22-13-2-8; IC 22-13-2-13.

TITLE 828 STATE BOARD OF DENTISTRY

LSA Document #03-62

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

OVERVIEW: Amends 828 IAC 1-5 concerning the continuing education requirements for dentists and dental hygienists. Adds 828 IAC 1-5-6 concerning ethics and professional responsibility continuing education requirements for dentists and dental hygienists. Effective 30 days after filing with the secretary of state. Public comments are invited and may be directed to the Indiana State Board of Dentistry, ATTENTION: Director, 402 West Washington Street, Room W041, Indianapolis, Indiana 46204 or by e-mail to stansinsin@hpb.state.in.us. Statutory authority: IC 25-13-1-5; IC 25-3-2-10; IC 25-14-1-13; IC 25-14-3-12.

TITLE 828 STATE BOARD OF DENTISTRY

LSA Document #03-73

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

OVERVIEW: Amends 828 IAC 1-1 concerning the examination for licensure to practice dentistry. Amends 828 IAC 1-2 concerning the examination for licensure to practice dental hygiene. Effective 30 days after filing with the secretary of state. Public comments are invited and may be directed to the Indiana State Board of Dentistry, ATTENTION: Director, 402 West Washington Street, Room W041, Indianapolis, Indiana 46204 or by e-mail to stansinsin@hpb.state.in.us. Statutory authority: IC 25-13-1-5; IC 25-14-1-13.

TITLE 868 STATE PSYCHOLOGY BOARD

LSA Document #03-60

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

OVERVIEW: Amends 868 IAC to add a section establishing a list of restricted psychology tests. Questions or comments may

be directed to the State Psychology Board, ATTENTION: Board Director, Indiana Government Center-South, 402 West Washington Street, Room W041, Indianapolis, Indiana 46204, or by electronic mail to hpb7@hpb.state.in.us. Statutory authority: IC 25-33-1-3.

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #03-59

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

OVERVIEW: Amends 872 IAC 1-2-1 to incorporate by reference the 2002 pronouncements on professional standards of the American Institute of Certified Public Accountants (to apply to certified public accountants) and 2001 rule of professional conduct of the National Society of Public Accountants (to apply to accounting practitioners and public accountants). Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Staff Counsel, 302 West Washington Street, Room E034, Indianapolis, Indiana 46204-2700 or by electronic mail at mdavis@pla.state.in.us. Statutory authority: IC 25-2.1-2-15.

TITLE 880 SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD

LSA Document #03-53

Under IC 4-22-2-23, the Speech-Language Pathology and Audiology Board intends to adopt a rule concerning the following:

OVERVIEW: Adds 880 IAC 1-2.1 concerning speech-language pathology aides. Repeals 880 IAC 1-2 concerning speech-language pathology aides. Questions or comments may be directed by mail to the Speech-Language Pathology and Audiology Board, Indiana Government Center-South, 402 West Washington Street, Room W041, Indianapolis, Indiana 46204, or by e-mail at wlowhorn@hpb.state.in.us. Statutory authority: IC 25-35.6-2-2.

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Proposed Rule
LSA Document #02-342

DIGEST

Adds 50 IAC 19 to provide uniform procedures necessary to review and assess the real property of an industrial facility located in Lake County, Indiana under IC 6-1.1-8.5. Effective 30 days after filing with the secretary of state.

50 IAC 19

SECTION 1. 50 IAC 19 IS ADDED TO READ AS FOLLOWS:

ARTICLE 19. LAKE COUNTY INDUSTRIAL FACILITY; REAL PROPERTY ASSESSMENT

Rule 1. Primary Definitions

50 IAC 19-1-1 Applicability
Authority: IC 6-1.1-8.5-12
Affected: IC 6-1.1-8.5

Sec. 1. Unless otherwise indicated, the definitions contained in IC 6-1.1-8.5 also apply to this article. *(Department of Local Government Finance; 50 IAC 19-1-1)*

Rule 2. General Provisions

50 IAC 19-2-1 List of industrial facilities provided to the department
Authority: IC 6-1.1-8.5-12
Affected: IC 6-1.1-4-4; IC 6-1.1-8.5-1

Sec. 1. (a) Before January 1, 2004, and before January 1 of each year that a general reassessment commences under IC 6-1.1-4-4, the county assessor shall provide to the department a list of each industrial facility located within the county.

(b) Each building commissioner before January 1 of each year for new construction completed during the prior twelve (12) months shall notify the department of a newly constructed industrial facility potentially exceeding twenty-five million dollars ($25,000,000) in total value located in the jurisdiction that the commissioner serves.

(c) The township assessor of each township before January 1 of each year for new construction completed during the prior twelve (12) months shall notify the department of a newly constructed industrial facility potentially exceeding twenty-five million dollars ($25,000,000) in total value in the township that the assessor serves. *(Department of Local Government Finance; 50 IAC 19-2-1)*

50 IAC 19-2-2 Assessment by the department
Authority: IC 6-1.1-8.5-12
Affected: IC 6-1.1-4-4; IC 6-1.1-8.5-8; IC 6-1.1-8.5-9; IC 6-1.1-30-13

Sec. 2. (a) The department shall assess each industrial facility located within the county for:
(1) purposes of a general reassessment under IC 6-1.1-4-4; and
(2) a newly constructed industrial facility.

(b) Not less than six (6) months after receiving notice of the new construction from a township assessor or building commissioner, the department shall schedule an assessment.

(c) To determine the true tax value of the industrial facility, the department shall use appraisal methods consistent with the rules pertaining to the assessment of real property.

(d) The department may request that the industrial company or the county assessor make available all information necessary or proper to determine the true tax value. If the industrial company or county assessor fails or refuses to provide the information requested, the department may take necessary actions pursuant to IC 6-1.1-30-13 in order to obtain the information and further, the industrial company or county assessor may not introduce any information withheld as evidence in any proceedings involving the assessment of the industrial company's real property. *(Department of Local Government Finance; 50 IAC 19-2-2)*

50 IAC 19-2-3 Certification of values; appeal and review
Authority: IC 6-1.1-8.5-12
Affected: IC 6-1.1-8.5-10; IC 6-1.1-8.5-11

Sec. 3. (a) The department shall certify the true tax value of the industrial facility to the county auditor and to the county assessor.

(b) The county assessor has thirty (30) days to review the certified value to determine the validity and may present findings to the department. The department may extend this time to review for good cause. The department may make additions or corrections to the assessment.

(c) When the department determines the final assessment of an industrial facility, the county auditor shall enter for taxation the assessed valuation certified by the department.

(d) The department shall provide notice to the county assessor, the county auditor, and the industrial company of its final assessment. *(Department of Local Government Finance; 50 IAC 19-2-3)*

50 IAC 19-2-4 Appeal of assessments
Authority: IC 6-1.1-8.5-12
Affected: IC 6-1.1-8.5-11; IC 6-1.1-15

Sec. 4. (a)The industrial company or the county assessor of the county in which the industrial facility is located may appeal an assessment by the department made under this article to the Indiana board of tax review.

(b) If the industrial company or the county assessor appeals an assessment made by the department, the department must notify the county auditor of the appeal.

(c) An appeal under this section will be conducted in the same manner as an appeal under IC 6-1.1-15-4 through IC 6-1.1-15-8.

(d) An assessment made under this article that is not timely appealed is a final order of the department and is not subject to further appeal. *(Department of Local Government Finance; 50 IAC 19-2-4)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 29, 2003 at 2:00 p.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room1058, Department of Local Government Finance Conference Room, Indianapolis, Indiana the Department of Local Government Finance will hold a public hearing on proposed new rules to govern the assessment of Lake County industrial facilities. Parties interested in participating in the public hearing are encouraged to attend and submit written statements expressing their specific or general concerns, any suggested additions or revisions, and any documentation that may serve to support, clarify, or supplement their concerns, suggestions, or proposed revisions. The Department of Local Government Finance also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Heather Scheel, Department of Local Government Finance, at (317) 232-5895. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Beth Henkel
Commissioner
Department of Local Government Finance

TITLE 80 STATE FAIR COMMISSION

Proposed Rule
LSA Document #02-243

DIGEST

Adds 80 IAC 4-4 regarding the regulation or prohibition of alcohol, weapons, and unauthorized animals at the Indiana state fair. Effective 30 days after filing with the secretary of state.

80 IAC 4-4

SECTION 1. 80 IAC 4-4 IS ADDED TO READ AS FOLLOWS:

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)*

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)

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 which are displayed in an exhibit or stored in a manner approved or sanctioned by the fair board or the 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)*

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)*

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)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 23, 2003 at 9:30 a.m., at the Indiana State Fair Administration Building Conference Room, 1202 East 38th Street, Indianapolis, Indiana the State Fair Commission will hold a public hearing on proposed amendments to rules relating to the restrictions on alcoholic beverages, deadly weapons, and unauthorized animals at the annual state fair. Copies of these rules are now on file at the State Fair Commission, 1202 East 38th Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

William Stinson
Executive Director
State Fair Commission

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

Proposed Rule
LSA Document #03-17

DIGEST

Amends 105 IAC 9-1-1 and 105 IAC 9-1-2 concerning prohibited activities on interstate highways, including stopping,

standing, parking, pedestrian movement, and certain vehicles. The rule will amend the list of interstate highways in order to delete I-165 and to add I-275, I-469, and I-865. Effective 30 days after filing with the secretary of state.

105 IAC 9-1-1
105 IAC 9-1-2

SECTION 1. 105 IAC 9-1-1 IS AMENDED TO READ AS FOLLOWS:

105 IAC 9-1-1 Stopping, standing, or parking prohibited on interstate highways

Authority: IC 8-23-2; IC 8-23-4
Affected: IC 9-21-8; IC 9-21-16

Sec. 1. Stopping, standing, or parking shall be prohibited on ~~the following~~ enumerated highways:

(1) I-64;
(2) I-65;
(3) I-69;
(4) I-70;
(5) I-74;
(6) I-80;
(7) I-90;
(8) I-94;
(9) I-164; ~~I-165,~~
(10) I-265; ~~and~~
(11) I-275;
(12) I-465;
(13) I-469; and
(14) I-865;

otherwise known as the "Interstate Highway System", including ramp connections, except in designated rest areas. *(Indiana Department of Transportation; Rule 100-78; filed Jan 29, 1979, 3:11 p.m.: 2 IR 296; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 4-2-1) to Indiana Department of Transportation (105 IAC 9-1-1) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

SECTION 2. 105 IAC 9-1-2 IS AMENDED TO READ AS FOLLOWS:

105 IAC 9-1-2 Pedestrians and certain vehicles prohibited on interstate highways

Authority: IC 8-23-6; IC 8-23-4
Affected: IC 9-21-8; IC 9-21-16

Sec. 2. Pedestrians, motorized bicycles, bicycles, and other nonmotorized traffic shall be prohibited from ~~the following~~ enumerated highways:

(1) I-64;
(2) I-65;
(3) I-69;
(4) I-70;
(5) I-74;
(6) I-80;
(7) I-90;
(8) I-94;
(9) I-164; ~~I-165,~~
(10) I-265;
(11) I-275; ~~and~~
(12) I-465;
(13) I-469; and
(14) I-865;

otherwise known as the "Interstate Highway System". *(Indiana Department of Transportation; Rule 101-78; filed Jan 29, 1979, 3:11 p.m.: 2 IR 296; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899) NOTE: Transferred from Department of Highways (120 IAC 4-2-2) to Indiana Department of Transportation (105 IAC 9-1-2) by P.L.112-1989, SECTION 5, effective July 1, 1989.*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 1, 2003 at 9:00 a.m., at the Indiana Government Center-North,100 North Senate Avenue, Room 730, Indianapolis, Indiana the Indiana Department of Transportation will hold a public hearing on proposed amendments concerning prohibited activities on interstate highways, including stopping, standing, parking, pedestrian movement, and certain vehicles. The rule will amend the list of interstate highways in order to delete I-165 and to add I-275, I-469, and I-865. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 730 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

J. Bryan Nicol
Commissioner
Indiana Department of Transportation

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #03-24

DIGEST

Amends 312 IAC 5-2-47 that defines "waters of concurrent jurisdiction" to include the portion of the Wabash River that forms a border with Illinois and to include the Great Miami River. Amends 312 IAC 5-13-2 by requiring children under 13 years of age to wear personal flotation devices (sometimes call "life preservers") to conform with United States Coast Guard requirements. Deletes rule language pertaining to personal flotation devices that is now addressed by statute. Effective 30 days after filing with the secretary of state.

312 IAC 5-2-47
312 IAC 5-13-2

SECTION 1. 312 IAC 5-2-47 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-2-47 "Waters of concurrent jurisdiction" defined

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3
Affected: IC 14

Sec. 47. "Waters of concurrent jurisdiction" ~~means the portions of Lake Michigan over which Indiana has concurrent jurisdiction with the United States and the portions of the Ohio River over which Indiana has concurrent jurisdiction with the commonwealth of Kentucky.~~ **refers to the following waters within Indiana:**

(1) Lake Michigan.

(2) Ohio River.

(3) Wabash River where it forms the boundary between Indiana and Illinois.

(4) Great Miami River.

(Natural Resources Commission; 312 IAC 5-2-47; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002)

SECTION 2. 312 IAC 5-13-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-13-2 Children wearing personal flotation devices on waters of concurrent jurisdiction

Authority: IC 14-10-2-4; IC 14-15-7-5
Affected: IC 14-15

Sec. 2. ~~(a)~~ A person must not use a recreational watercraft **on waters of concurrent jurisdiction** unless ~~at least one (1) personal flotation device is onboard for each person as follows:~~

~~(1) Type I personal flotation device.~~

~~(2) Type II personal flotation device.~~

~~(3) Type III personal flotation device.~~

~~(b) A person must not use a recreational watercraft at least sixteen (16) feet long unless one (1) Type IV personal flotation device is on-board in addition to the total number of personal flotation devices required in subsection (a).~~

~~(c) Notwithstanding subsections (a) and (b), a Type V personal flotation device may be carried instead of a required personal flotation device if the Type V personal flotation device is approved by the United States Coast Guard for the activity in which the recreational watercraft is being used.~~ **each child onboard under thirteen (13) years of age is wearing an appropriate personal flotation device approved by the United States Coast Guard, except where:**

(1) the child is below deck;

(2) the child is in an enclosed cabin; or

(3) the watercraft is docked or at anchor.

(Natural Resources Commission; 312 IAC 5-13-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2388, eff Jan 1, 2002)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 28, 2003 at 10:30 a.m., at the Natural Resources Commission, Division of Hearings, Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments to 312 IAC 5-2-47 to include the portion of the Wabash River that forms a border with Illinois and to include the Great Miami River in the definition of waters of concurrent jurisdiction. Amends 312 IAC 5-13-2 by requiring children under 13 years of age to wear personal flotation devices (sometimes call "life preservers") to conform with United States Coast Guard requirements. Deletes rule language pertaining to personal flotation devices that is now addressed by statute. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #02-189

DIGEST

Amends 326 IAC 23-1, 326 IAC 23-2, 326 IAC 23-3, and 326 IAC 23-4 concerning the licensing of individuals and contractors engaged in lead-based paint and training activities. Adds 326 IAC 23-5 to add work practice standards for nonabatement activities. Repeals 326 IAC 23-1-22, 326 IAC 23-1-23, 326 IAC 23-1-37, 326 IAC 23-1-40, 326 IAC 23-1-42, 326 IAC 23-1-43, 326 IAC 23-1-44, 326 IAC 23-1-45, 326 IAC 23-1-46, and 326 IAC 23-1-47. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: July 1, 2002, Indiana Register (25 IR 3464).

Second Notice of Comment Period: November 1, 2002, Indiana Register (26 IR 548).

Change in Notice of Public Hearing: February 1, 2003, Indiana Register (26 IR 1592).

First Public Hearing: Opened on February 5, 2003, and continued to March 5, 2003.

Continuation of First Public Hearing: March 5, 2003.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-

14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

REQUEST FOR PUBLIC COMMENTS

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on November 1, 2002, at 26 IR 548. The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

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

#02-189 Lead-based paint
Suzanne Whitmer
c/o Administrative Assistant
Rule Development Section
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the Office of Air Quality, Tenth Floor East, 100 North Senate Avenue, Indianapolis, Indiana. Comments may also be submitted by facsimile to (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by April 22, 2003.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from November 1, 2002, through December 2, 2002, on IDEM's draft rule language. IDEM received comments from the following parties:

Cabinet for Health Services, Commonwealth of Kentucky (KY)
City of Bloomington, Bruce Jennings (COB)
Community Housing Development Organization (CHD)
Elkhart Housing Partnership, Inc. (EHP)
Environmental Management Institute (EMI)
Greentree Environmental Svc., Inc (GES)
Housing Opportunities Inc. (HOI)
Improving Kids' Environment (IKE)
Ohio Valley Opportunities, Inc. (OVO)

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

Reciprocity

Comment: Individuals in states near Indiana find it difficult to operate in Indiana without a reciprocity agreement for licensing. If Indiana would accept training from all course providers that were either an EPA-approved course or approved by states authorized by the U.S. EPA to approve course providers, the cost and difficulty of reciprocity would be reduced enormously. To ensure that persons know the special Indiana requirements, they could be required to take an Indiana rules course taught by any course provider with Indiana approval for the supervisor initial or risk assessor initial courses. (IKE)

Comment: One of the more prevalent issues between the lead-based paint programs in Indiana and Kentucky is dealing with the acceptance of certified companies and individuals that have received their certification from Kentucky. Although the training is provided by one of the common credited trainers, those trained in Kentucky must retake courses and the third-party test in order to work in Indiana. It would seem this is redundant and a hindrance for certain lead compliance situations. Kentucky would like to have a reciprocity agreement with the state of Indiana to better address lead hazard issues on a regional scale. (KY)

Comment: As stipulated by U.S. Department of Housing and Urban Development (HUD), projects that exceed twenty-five thousand dollars ($25,000) in rehabilitation hard costs are required to be performed by licensed abatement workers or contractors. The reciprocity provisions under the training course provider rule has limited potential. A direct reciprocity provision for license holders from states contiguous to Indiana would transform potential into reality. (OVO)(EHP)(CHD)(HOI)

Comment: New language for reciprocal licensing should include that the training course provider is U.S. EPA approved, the applicant has a valid training certificate certified by the training course provider, an Indiana rules class is completed, and an application is submitted with a twenty-five dollar ($25) fee. (EMI)

Response: The department has added a provision for reciprocity at 326 IAC 23-2-6.5. A person who holds a current U.S. EPA or U.S. EPA state or tribe authorized lead-based paint program license may submit a completed application on forms provided by the department, a copy of the current license, proof of having attended the two (2) hour Indiana lead-based paint awareness course, and additional documentation indicating that the applicant or the applicant's designated representative meets the experience, education, and training requirements including proof of taking and passing all initial and required refresher courses. These requirements will make it easier for licensees from other states to obtain an Indiana license, while ensuring that they are aware of Indiana's particular rules. In addition to license reciprocity, a person who receives training in another state may use that training to fulfill the training requirement for an initial Indiana license under 326 IAC 23-2-4.

Comment: Under 326 IAC 23-3-3, Initial Training Course Requirements, new language is suggested as minimum requirements for training course reciprocity. (EMI)

Response: Under 326 IAC 23-2-4, language has been added to allow a person who has received training from a U.S. EPA approved or U.S. EPA state or tribal authorized lead-based paint course in another state to use that training to fulfill the training requirement for an initial Indiana license.

Comment: Why charge additional fees per license for reciprocity, if an Indiana refresher course would be required. It seems at every opportunity fees are being levied to these contractors. (COB)

Response: The fee charged for processing an application for each discipline reflects a portion of the administrative costs incurred by the department to perform the required background check that is performed on each application.

Comment: Kentucky requires a refresher course to be taken within two (2) years of licensing while Indiana utilizes a three (3) year period. Differences between the programs must be worked out before reciprocity can be accomplished between the states. (KY)

Response: The department understands Kentucky's concern. However, the three (3) year period between refresher courses is stipulated by Indiana statute and cannot be amended by this administrative rule process.

Definitions

Comment: Please define the term "access" to project supervisors. Will supervisors be required to be physically present on site during work, or does access include by cell phone? (COB)

Response: "Access to project supervisors" means that project supervisors must be physically present on-site to be accessible to workers.

Comment: During the first comment period, we requested the definition of "lead-based paint activities" at 326 IAC 23-1-36 be amended by adding clearance examination to the list of activities. IDEM stated it prefers to not vary from the federal rules, but IDEM is now regulating clearance examiners who conduct clearance examinations after nonabatement activities. HEA 1171 requires that the state rules vary from the federal rules in this regard. (IKE)

Response: The department has followed the requirements of HEA 1171 by adding "clearance examiner" as a licensed discipline at 326 IAC 326 IAC 23-2-3 and by adding work practice standards for nonabatement activities at 326 IAC 23-5. However, adding clearance examination to the definition of "lead-based paint activities" would be an expansion of the lead-based paint regulatory program that is beyond the scope of this rulemaking.

Comment: A definition of "clearance examination" is needed. (IKE)

Response: The department agrees and a definition of clearance examination has been added to the draft rule at 326 IAC 23-1-7.5.

Comment: Emergency repairs should remain a part of this rule and defined to include "activities performed in an effort to reduce or eliminate lead exposure to a child when identified as lead poisoned in any facility or housing unit by a licensed risk assessor as an exposure contributing pathway during elevated blood lead (EBL) investigation." Clearance testing should be required before occupancy. (GES)

Response: U.S. EPA does not address emergency repairs in the lead-based paint rules. Emergency situations are not recognized in the lead paint license program except for elevated blood lead levels, which are addressed by the health department. Therefore the language is not appropriate in this rule.

Comment: A definition of "renovation" is needed. The term is used four times in section 37. EPA's definition at 40 CFR 745.83 should be used. (IKE)

Response: The department agrees and has added the federal definition in the draft rule at 326 IAC 23-1-58.5.

Comment: In the record keeping section of the rule, 326 IAC 23-4-13, the word "days" should be defined either "calendar" or "working". (COB)

Response: The department has added the term "calendar" to the term "days" in 326 IAC 23-4-13 for record keeping.

Comment: The definition of "common area group", 326 IAC 23-1-9, is not used anywhere else in the rule. The term "common area" is essential to the rule. The common area group definition should not have been created by deleting a regulation-specific term. Please restore the definition to its original form. (EMI)

Response: U.S. EPA changed the term "common area" in the January 5, 2001, Federal Register (66 FR 1205) to "common area group". The department has proposed to change the term to common area group within the entire rule to reflect this new amendment. The new term's definition is more inclusive and must be added to the rules to assure minimum federal requirements are met.

Comment: The definition of "containment" at 326 IAC 23-1-12 is not needed. Other parts of this rule make it illegal to conduct lead-based paint abatement without processes in place to control exposures to the lead-contaminated dust and debris created during abatement. The commentator suggests rule language to include the use of barriers and work practices to reduce dust and debris from the work area. (EMI)

Response: There are two (2) distinctions between the U.S. EPA and HUD definition of containment. The HUD rule applies narrowly to only federally owned and assisted housing and only applies to preventing dust and debris from leaving the worksite. The U.S. EPA rule applies more broadly to all target housing and child-occupied facilities and is meant to protect workers and the environment. The U.S. EPA standard is more generally defined and, therefore, more protective. For these reasons, the department must include the U.S. EPA definition of containment to ensure Indiana rules meet the same level of stringency.

Comment: In the definition of "deteriorated paint" at 326 IAC 23-1-17, we suggest use of the U.S. EPA's definition from 40 CFR 745.63. (EMI)

Response: The department agrees and will change the definition.

Comment: Please cite the relevant U.S. EPA standards for the following definitions "dust-lead hazard" (326 IAC 23-1-21.5), "paint-lead hazard" (326 IAC 23-1-52.5), and "soil-lead hazard" (326 IAC 23-1-60.6) and revise them to include the reference. (EMI)

Response: The department agrees and has added the U.S. EPA standards to each section of the rule.

Comment: Under 326 IAC 23-1-22 and 326 IAC 23-2-1(b)(2)(B)(ii), change the term "elevated blood lead level" to "environmental intervention blood lead level". The national definition of "elevated blood lead level" is a confirmed concentration above ten (10) micrograms per deciliter. Indiana should not try to redefine this term. (EMI)

Response: The department agrees and has changed the term to "environmental intervention blood lead level" in both rule sections.

Comment: A definition of "elevated blood lead level" is needed for the term in 326 IAC 23-5-1(b)(2)(C) and should refer to the state department of health's definition. (IKE)

Response: In order to clarify the rules, the department has revised the term from "elevated blood lead level" to "environmental intervention blood lead level" at 326 IAC 23-1-22 and has used the national definition.

Comment: It is not usual to remove lead from a project. Removal of metallic lead would be less dangerous than improper removal of lead-based paint. Delete and replace the definition of "lead-contaminated waste" in 326 IAC 23-1-40 and 326 IAC 23-4-5 with the suggested language for "lead abated waste". (EMI)

Comment: There is no reason to use the term at 326 IAC 23-1-40, "lead-contaminated waste" since Indiana does not regulate lead-based paint wastes from residential work. The term "lead-abated waste" is more useful for describing project wastes. (EMI)

Response: The department agrees and will propose to delete the term "lead-contaminated waste" under 326 IAC 23-1-40 and add a new definition of "lead abated waste" at 326 IAC 23-1-33.5. The term will also be changed in other sections of the rule.

Comment: The definition of "mid-yard" at 326 IAC 1-2-48.6 should be deleted since it is not used anywhere else in the rule. (EMI)

Response: The definition will be deleted from the draft rule.

Comment: We assume that "paint in poor condition" as defined at 326 IAC 23-1-52 means to follow the federal de minimis amounts which are twenty (20) square feet on an exterior component. We would ask that this definition be changed to twenty (20) square feet on exterior components. (GES)

Response: The department agrees and will add "twenty (20) square feet" to the definition in 326 IAC 23-1-52.

Comment: The U.S. EPA definition of "paint-lead hazard" at 40 CFR 745.65 should be used in the definition of "paint-lead hazard" at 326 IAC 23-1-52.5. (EMI)

Response: The federal language was changed from "lead paint hazard" to "paint lead hazard" in the January 5, 2001, Federal Register

(66 FR 1205). The term will be amended to "paint lead hazard" consistent with 40 CFR 745.

Comment: The definition of "play area" at 326 IAC 23-1-54.5 should include the term "or younger" after "six (6) years of age". All other IDEM and U.S. EPA definitions include six (6) year olds. (EMI)

Response: The department agrees and will add the language to 326 IAC 23-1-54.5.

Comment: A set of parentheses are missing from the equation in the definition of "weighted arithmetic mean" at 326 IAC 23-1-69.5. (EMI)

Response: The department has corrected the equation.

Risk Assessors/Risk Assessment

Comment: Add to 326 IAC 23-4-2 that upon delivery of the risk assessment report to the stated individuals, the risk assessor should also forward a copy to the county assessors office for inclusion in the property records in an effort to reduce reoccupancy levels and alleviate the possibility of additional children being poisoned from the same property. (GES)

Response: The Air Pollution Control Board does not have statutory authority to direct county assessors to include the report in the property records and establishing this process is beyond the scope of this rulemaking.

Comment: In 326 IAC 23-4-4(4) (risk assessment), there is confusion on what constitutes one (1) or more children coming in contact with dust. Does this include the time requirement of six (6) hours per week contained in the definition of child-occupied facility at 326 IAC 23-1-7? (GES)

Response: Yes, if contact is more than six (6) hours per week, per one (1) or more children six (6) years of age or younger, it is defined as a child-occupied facility.

Federal requirements

Comment: In 326 IAC 23-3-6(f), U.S. EPA allows worker and supervisor training to be taught together. For consistency, Indiana should follow U.S. EPA's approach and make it easier to attract workers. It is inappropriate for IDEM to resist improving the rule because the language was in the original approved program. (IKE)

Response: U.S. EPA provides for combined worker and supervisor training through policy rather than by rule. The department will address combined worker and supervisor training in policy.

Comment: Section 37(b) of the rule (326 IAC 23-1-37) is designed to incorporate the essential provisions of 40 CFR 745.83 into the rules. However, there are significant changes to the federal requirements that make the requirements ineffective. U.S. EPA requires the pamphlet be provided to the owner and occupant and requires written acknowledgment of receipt of the pamphlet from the owner of the target housing. Indiana provides an exemption for lead abatement work performed by people on their own property. U.S. EPA is silent on this issue. U.S. EPA allows a contractor to avoid providing the notice where there is a licensed inspector who confirms that the paint is not lead based. Indiana provides no exemption. Indiana should incorporate the federal requirements by reference. They should not make modification to the carefully crafted federal requirements. (IKE)

Response: The department will add the requirements under 40 CFR 745.85 to the rule at 326 IAC 23-1-52.5 concerning notification of receipt of the pamphlet. The exemption for lead abatement work performed by people on their own property is from the Indiana statute and is not a requirement from U.S. EPA. The exemption to notification that U.S. EPA provides under 40 CFR 745.82(b)(3) is for renovation activities which are not included in this rule.

Comment: Under 326 IAC 23-4-5, Indiana's exclusion on work standards being required on properties constructed after 1960 is not consistent with federal guidelines which require safe work practices to be performed on all properties constructed prior to January 1, 1978. This will confuse contractors and work to circumvent the federal statute and does not meet the same as or more stringent than state requirements for rule development. (GES)

Response: The language regarding properties constructed after 1960 is a statutory requirement, IC 13-14-17, regarding nonabatement activities. The department must address statutory requirements.

Comment: In previous comments, it was suggested that IDEM follow U.S. EPA's policy and allow an equivalent lead hazard information pamphlet be distributed other than U.S. EPA's. IDEM is being inconsistent by not following U.S. EPA's policy. (IKE)

Response: At a minimum, the department requires the U.S. EPA pamphlet to be distributed to assure consistency of information to all affected parties, however, additional information may be added to the handout materials. By requiring the distribution of U.S. EPA's pamphlet, U.S. EPA's up-to-date rules and policies are available to all affected parties.

Comment: We request adoption in the statute of the contractor disclosure requirements in the federal U.S. EPA "Lead Pre-Renovation Rule". (GES)

Response: Adoption of such requirements by state rule would be a significant expansion of the lead-based paint program to include renovation, remodeling, and precursors to those programs and is beyond the scope of HEA 1171 and our current statutory authority.

Sampling/Work Practice

Comment: In 326 IAC 23-4-4(7)(B), there is no U.S. EPA or IDEM lead-paint hazard standard for dripline soil. Why should a sample be collected if it cannot be interpreted? Delete subdivision (B) and add "the rest of the yard where bare soil is present including nonplay areas". (EMI)

Response: The department has added the suggested language as subdivision (C) and maintained subdivision (B). Dripline soil is governed by the soil lead hazard standard, in the amended federal rule under TSCA Section 403, of four hundred (400) parts per million.

Comment: In 326 IAC 23-4-9(6)(A), clearance exam protocols, there is a requirement that a minimum of eight (8) surface samples (wipes) to be taken. We would ask that a minimum wipe requirement be established or "come in contact with" be defined. This will go far in establishing a consistent sampling protocol for all state licensed risk assessors as well as course instructors when training potential licensees. (GES)

Comment: In 326 IAC 23-1-60(2), under the definition of risk assessment, taking wipes of any kind is the responsibility of a licensed risk assessor. By definition, sampling is an on-site investigation to determine the existence of lead-based paint in what ever location and or amounts found. (GES)

Response: The number of wipes is pre-determined by the number of rooms being sampled at 326 IAC 23-4-3 and 326 IAC 23-4-4. Since the number of rooms and the size of the facility being inspected can vary in size and number from one (1) location to another, we are unable to provide a de minimis number of wipes to be listed in the rule.

Licensing

Comment: No state takes longer to issue licenses than Indiana. Since the state has no need to consult anything other than the submitted paperwork and its own records in order to issue a refresher certificate, there seems to be little reason to take more than a single hour for such renewals. The rule needs to set time limits after the date of receipt of the application for informing the applicant of any deficiencies and then set further limits for issuing the license after all materials are received. The commentator submits suggested language and time frames for reviewing license applications. (EMI)

Response: The department processes lead-based paint licenses as expeditiously as possible while meeting our responsibility to ensure

that licenses are appropriate for each application. The lead-based paint license process includes a variety of steps to be able to issue a license. These steps include applicants taking the third-party exam, submittal of the application and appropriate fees, review of the application for completeness, and verification of training and actual issuance and mailing of the license. In addition to the steps listed above, training course providers have up to two (2) weeks to submit their class rosters to the department to verify training. Lead-based paint license applications are prioritized on a first come, first served basis along with asbestos license applications. A one (1) hour turn-around time cannot be achieved with all the steps listed above. IDEM will continue to strive to issue licenses as expeditiously as possible and implement efficiencies wherever possible.

Comment: In 326 IAC 23-3-3(4), initial training course requirements, delete clause (I) which lists the personal protective equipment to be worn by a project designer. This was covered in the required supervisor course. There is not enough time to repeat this information and it is not required by U.S. EPA. (EMI)

Response: The department agrees and will strike the language from the draft rule in 326 IAC 23-3-3(4)(I).

Fraud

Comment: The commentator submits suggested language for the inclusion and exclusion of activities related to a lead hazard screen. (EMI)

Comment: While HUD only requires lead inspectors and risk assessors to be certified, the spirit of the provision is that these individuals should be licensed and regulated by the state. As the Indiana rule is currently written, there is too much ambiguity in the definitions of what constitutes a lead inspection and a risk assessment. Consequently, individuals and firms may skirt the licensing requirement and propagate fraud by marketing equivalent services by another name. Any individual or firm that takes a lead sample or provides recommendations on mitigating lead hazards on a contractual basis should be licensed. (OVO)(EHP)(CHD)(HOI)

Comment: We are concerned that unlicensed individuals may be advertising their services as a risk assessment but then claim to be conducting only a risk investigation or risk examination or some other task that does not require a license. The definition of risk assessment needs to be modified to include situations where an individual advertises his or her services as a risk assessment. Similar changes are needed to the definition of lead-hazard screen, abatement, and inspection. (IKE)

Comment: Because Indiana narrowly interprets the rules to be applicable only to abatement activities, almost any project can be defined out of the regulated category. People are purporting to perform lead-based paint hazard services who do not have the necessary training and experience to perform the work well. The problem is especially severe with regard to risk assessments and inspections. Lead-based paint risk assessment and lead-based paint inspection need to be regulatory terms so consumers can compare vendor quotes accurately. The state needs to include U.S. EPA's language in 40 CFR 745.220 and 40 CFR 745.223. (EMI)

Comment: Modify the definition of "risk assessment" to make it clear that the collecting of samples does not constitute a risk assessment. IDEM agreed with this conclusion in its response to comments, but decided further clarification was not needed in the rule. (IKE)

Response: The rules at 326 IAC 23-4-2 and 326 IAC 23-4-4 require that both an "inspection" and a "risk assessment" include a detailed set of tasks to be performed. The department has further defined "inspection" by including at 326 IAC 23-1-62.5 that a "surface-by-surface investigation," as used in the definition of "inspection" at 326 IAC 23-1-33, means an investigation of the entire target housing or child-occupied facility. If a company claims that it is providing an inspection or a risk assessment, and such services do not meet the definitions or include all of the tasks set forth in 326 IAC 23-4-2 and 326 IAC 23-4-4, that company would be in violation of the rules and may be subject to either civil or criminal enforcement. If a company provides services that are something less than an inspection or risk assessment, and calls it something other than an inspection or risk assessment, the department does not regulate such activity.

Comment: 326 IAC 23-2-3(c)(1) essentially restates the requirements to become a licensed lead supervisor. It would be clearer to amend the rule to state that an abatement contractor must have a licensed lead supervisor as an agent or employer. (IKE)

Response: The department disagrees. The supervisor and contractor licenses have different requirements and, therefore, are listed in separate sections of the rule to clarify those differences.

Comment: The dual use of the term "contractor" as both a specific type of license and a business structure is confusing. Change the word "contractor" or "lead-based paint activities contractor" to "abatement contracting firm" in all instances in the rule. (EMI)

Comment: Change the word contractor to firm in all instances in the rule. (EMI)

Comment: The current rules define a licensed contractor as any person conducting lead-based paint activities which include risk assessment and inspections. However, the licensing requirements for a licensed contractor contemplate only abatement work and not risk assessment or inspections. The licensing requirement clearly does not require that any person doing a risk assessment become a licensed contractor. The term licensed contractor should be limited to abatement activities or use the term "firm" in place of contractor. (IKE)

Response: The department wants to distinguish between the term "contractor" and U.S. EPA's term "firm". The definition of "contractor," specific to this program, will be amended to be clearer.

Comment: 326 IAC 23-2-3(c) requires all risk assessors who do work for compensation to be licensed contractors and licensed supervisors. IDEM's practice is to only require a contractor's license for those who intend to perform abatement work. We agree with IDEM's practice and suggest the rules be revised to reflect that practice. (IKE)

Comment: Under the definition of "Risk assessment" at 326 IAC 23-1-60, add language to specify that a risk assessment includes projects other than lead hazard screens as defined in 326 IAC 23-1-41, for which there is a written contract or other document which provides that an individual or firm will be conducting activities in or to a regulated facility that shall result in the determination of the presence of lead-based paint hazards in the facility. Risk assessment does not include activities for which the person performing the activities receives no compensation by any person who has a current or future financial interest in the property, or is performed by a representative of the owner or occupant or by a prospective buyer of the facility, if the person performing the activity provides a disclaimer in all advertising that results reported do not constitute a complete lead inspection, risk assessment, or lead hazard screen. (EMI)

Response: The definition of risk assessment, risk assessor, inspection, and inspector meet U.S. EPA definitions. We have further clarified definitions of inspector by defining "surface-by-surface investigations" to make it clear that it includes the entire facility. Inspection, lead hazard screen, and risk assessments are defined in 326 IAC 23-4-2 and 326 IAC 23-4-4 by including specific steps that must be part of the activities and the report. Anyone who purports to perform inspections, lead hazard screens, or risk assessments and who does not follow these rules may be subject to enforcement.

Comment: A licensed supervisor, inspector, risk assessor, or

clearance examiner should be permitted to take the refresher training anytime after receiving the license. The person should not be required to take the refresher training any less than thirty-six (36) months before applying for a license renewal. If the person feels that he or she would benefit from the refresher training immediately after getting a license, the person should be allowed to do so without having to take the course again later. 326 IAC 23-2-5(a)(2) should say previous thirty-six (36) months, not previous twelve (12) months or twenty-four (24) months. (IKE)

Response: Because the license term is being extended to three (3) years from one (1) year, the department believes that refresher training should be taken within twelve (12) months of license renewal. Otherwise, a person could go almost six (6) years without a refresher course. For example, a refresher course could be taken in the first year of the license term and not until the third year of the next license term, with a gap of nearly six (6) years. The department has an interest to ensure that refresher courses are taken in closer proximity to license renewal. Nothing in the rule prevents a person from taking a refresher course sooner, if the person believes he or she would benefit from it.

Comment: In 326 IAC 23-2-5(a)(2), the word "course" in the phrase "take appropriate training course" should be singular, not plural, for particular discipline. The individual would not need both inspector and risk assessor refreshers and would not be reciprocal with other states with this language. (EMI)

Response: This language is not being included in the rule, but we are proposing a license reciprocity program under 326 IAC 23-2-6.5.

Comment: In 326 IAC 23-2-4(b)(2), if a supervisor has a license, they have submitted the information required by 326 IAC 23-2-3(d). By submitting name and proof of license, this has been submitted. (EMI)

Response: Because there are two (2) separate application packages, it is necessary to require the information be resubmitted for efficiency in the processing of applications.

Comment: Under licensing qualifications, define two (2) years of work in the construction trade. Are you going to allow someone who has worked at Lowe's as a sales representative to count that as construction time and experience, or are you going to be more specific on construction work experience? (COB)

Response: The department will review the application for work experience in construction. Work as a sales representative would not qualify as construction work.

Comment: In 326 IAC 23-2-7, lead license revocation and denial, IDEM should define terms and penalty periods for a lead contractor found in violation of regulations. IDEM should maintain a listing of such violators that is accessible to the public. Also, define procedures for renewal application for reinstatement of revoked contractors licenses. (COB)

Response: Revocations are in the current rule at 326 IAC 23-2-7 and are determined on a case-by-case basis. Any contractor whose license has been revoked would refer to the applicable reapplication procedures in 326 IAC 23-2-4. Penalty periods for violations are addressed by the Office of Enforcement, pursuant to the statutory authority in IC 13-30-4 and IC 13-30-5. Notices of violations and agreed orders are on IDEM's web site at www.state.in.us/idem/enforcement/.

Comment: Under 326 IAC 23-2-5(b), for license renewal, how will any new information be forwarded to qualified contractors? Will it be the responsibility of the contractor to collect the information or will IDEM forward it to license contractors. Who will monitor updated manuals? Will copies need to be turned in with renewal applications? Samples of the most current risk assessments should be included for review by IDEM in the renewal application for risk assessor. (COB)

Response: Contractors are required to stay abreast of current information. The department will review the updated manuals at the time of submittal for renewal. It is the department's policy to provide compliance assistance to the regulated community when new rules and guidance are issued.

Work Practice Standards

Comment: IDEM indicated in the second notice that 326 IAC 23-5 would provide procedures for nonabatement clearance procedures. We could not identify these in the draft rule. (IKE)

Response: The department responded at second notice that the statutory language would be included in the rule to provide easy access to the work practice standards for nonabatement activities. That language has been added under 326 IAC 23-5-1 and 326 IAC 23-5-2. Licensed clearance examiners will follow U. S. Department of Housing and Urban Development (HUD) regulations for procedures on nonabatement activities.

Comment: In 326 IAC 23-4-6 delete linear feet. Lead-based paint on pipes is not a normal course of lead-based paint abatement. Pipes are not a component. We are working with construction issues. (EMI)

Response: Pipes can contain lead-based paint and it would be measured in linear feet to notify the department of the scope of the abatement project. The department will add pipes to the list of components in the definition of "component or building component" defined at 326 IAC 23-1-11.

Testing

Comment: Previous comments requested that a third party examination not contain questions that do not reflect current state and federal guidelines or are not applicable to the operation of all models of x-ray fluorescent scopes. IDEM's preference to use U.S. EPA's third-party exam is contrary to the purpose of the rule. (IKE)

Response: U.S. EPA has invested significant resources into development of these examinations and encourages states to use them. We believe these exams are sufficient to ensure the applicant has been appropriately trained. We will continue to review the examinations and provide comments to U.S. EPA and verify the content of the examinations is sufficient to determine if the applicant is adequately trained.

Comment: Under 326 IAC 23-4-5, abatement procedures for all projects, change the number of questions for risk assessors and project designers to fifty (50) questions. (IKE)

Comment: In 326 IAC 23-3-5, examination requirements, the risk assessor exam should be fifty (50) questions. (EMI)

Response: The department believes that one hundred (100) questions provides a more thorough examination to assure that applicants have been trained on a wide variety of topics.

Contractors

Comment: The department should require any other agency or local government office receiving state or federal funding to assist in documentation and monitoring requirements for any lead contractors utilized in a lead project funded with state of federal monies. (COB)

Response: Neither the department nor the Air Pollution Control Board has statutory authority over other agencies or local governments for these purposes.

Comment: Under lead abatement notification procedures, 326 IAC 23-4-6(a), add the term "or agent" to the sentence "Each owner or operator". As the City of Bloomington we provide notices as would any agency receiving state or federal funding for lead project. (COB)

Response: IDEM believes the term "agent" is implicit in the term "owner or operator" because an agent is part of a contractual relationship with the owner or operator. An agent, in this case, would be contractually obligated to follow the rule as it applies to owners or operators. Therefore, it is not necessary to change the language to include "agent".

Comment: Change the wording under 326 IAC 23-2-4(b)(6) from

"lead-based paint contractual penalties" to "contractual penalties related to lead-based paint activities". (IKE)

Response: The department agrees and will recommend the change.

Comment: The requirements for abatement contracting firms are unduly restrictive since the law generally allows minor, older problems to be ignored when no repeat pattern is present. Actual violation of the law should be reported indefinitely, but there is no reason to include customer disputes after a few years have passed. Limit the description of lead-based project to the previous thirty-six (36) months and specify that ongoing current projects need not be included. (EMI)

Response: The department believes that prospective clients should be able to review the work history of a contractor with whom they may contract. Additionally, the department needs to perform a complete and accurate review and also must have access to the work history. For these reasons, the requested changes have not been made.

Fees

Comment: Fees charged by the state for its services should primarily reflect the effort needed to conduct the service and may secondarily reflect the value of the service to the user and the user's ability to pay. The fee schedule is higher than for asbestos on a per-license basis, but the lead license fees are cheaper on a per-year basis since they are three (3) year rather than one-year licenses. The fee should not set the bar so high that persons are discouraged from entering the discipline, since building capacity should be part of the rule's role. Under 326 IAC 23-2-8, delete "nonrefundable", change worker and clearance examiner fees to seventy-five dollars ($75) and contractor to three hundred dollars ($300). (EMI)

Response: Although the department is proposing to increase fees to the statutory limit of one hundred fifty dollars ($150), this fee will cover a three year rather than a one year application period. This change in license fee amount and duration will result in a cost savings to most licensees ranging from one hundred fifty dollars ($150) to three hundred dollars ($300), depending on the discipline. We have evaluated the fees in light of program costs and the impact of a three (3) year licensing cycle. The schedule proposed in the rule provides a cost savings to most licensees while ensuring sufficient resources for the state to maintain a high level licensing oversight, compliance, and other activities.

Comment: We are concerned about the noncompetitive aspects of high fees for courses for which few students enroll. If we had to pay one thousand dollars ($1,000) for each course as required by 326 IAC 23-3-12, application fee, we would discontinue offering worker courses entirely and we would be unlikely to offer the clearance examiner and Indiana Rules courses since the price impact for each enrollment would be significant and further reduce the number of students trained. There should be no fees for either of these two (2) courses. Instead they should be automatically allowed for any approved course providers with the proper qualifications. Since this requires no additional work on the part of the agency, the assessment of fees does not seem justified. (EMI)

Response: Each course offered requires review by department staff of the initial curriculum as well as other oversight activities, such as field audits. The fees included in the draft rule are necessary to support this work.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On March 5, 2003, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 23-1, 326 IAC 23-2, 326 IAC 23-3, 326 IAC 23-4, and new rule 326 IAC 23-5. Comments were received by the following parties:

Improving Kids' Environment (IKE)

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

Comment: Improving Kids' Environment supports the changes made to the rule. We will provide comments on a few minor issues regarding the number of questions on the examinations and the definition of elevated blood lead level at the next comment period. We understand the difficulty of addressing our issue concerning fraud and we think the department has done as much as it can do on this issue. However, we encourage the board to preliminarily adopt this rule so it can be final adopted by July 1, 2003.

Response: IDEM appreciates the comments and will continue to work with the interested parties during the next comment.

326 IAC 23-1-4
326 IAC 23-1-5
326 IAC 23-1-5.5
326 IAC 23-1-6.5
326 IAC 23-1-7.5
326 IAC 23-1-7.6
326 IAC 23-1-9
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326 IAC 23-1-32.1
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326 IAC 23-1-58.5
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326 IAC 23-1-60.1
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326 IAC 23-4-11
326 IAC 23-4-12
326 IAC 23-4-13
326 IAC 23-5

SECTION 1. 326 IAC 23-1-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-4 "Approved initial training course and approved refresher training course" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 4. "Approved initial training course and approved refresher training course" means a course approved by the department, **U.S. EPA, or a U.S. EPA state or tribe authorized lead-based paint program** pursuant to this article for the purposes of providing initial or refresher training to persons to become licensed under 326 IAC 23-2. ~~Between October 1, 1990, and the effective date of this article, an approved initial or refresher training course may include a course:~~

~~(1) approved by the department;~~

~~(2) that has full or contingent approval by the U.S. EPA; or~~

~~(3) that has been approved by a U.S. EPA-authorized state or tribal accredited training curriculum.~~

(Air Pollution Control Board; 326 IAC 23-1-4; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1432; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 2. 326 IAC 23-1-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-5 "Approved training course provider" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 5. "Approved training course provider" means a training course provider who has been approved by the department, **U.S. EPA, or a U.S. EPA state or tribe authorized lead-based paint program** to provide training for individuals engaged in lead-based paint activities **or provide an Indiana lead-based paint rules awareness course.** This approval is specific to each discipline and to each initial or refresher training course and is not an overall approval to provide training for all training courses. *(Air Pollution Control Board; 326 IAC 23-1-5; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1432; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 3. 326 IAC 23-1-5.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-5.5 "Arithmetic mean" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 5.5. "Arithmetic mean" means the algebraic sum of data values divided by the number of data values. For example, the sum of the concentration of lead in several soil samples divided by the number of samples is the arithmetic mean of the lead concentration. *(Air Pollution Control Board; 326 IAC 23-1-5.5)*

SECTION 4. 326 IAC 23-1-6.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-6.5 "Chewable surface" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 6.5. "Chewable surface" means an interior or exterior surface painted with lead-based paint that a child six (6) years of age or younger can mouth or chew. Hard metal substrates and other materials that cannot be dented by the bite of a child six (6) years of age or younger are not considered chewable. *(Air Pollution Control Board; 326 IAC 23-1-6.5)*

SECTION 5. 326 IAC 23-1-7.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-7.5 "Clearance examination" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 7.5. "Clearance examination" means an activity conducted by an Indiana licensed clearance examiner for the purpose of interim controls, as defined by the U.S. Department of Housing and Urban Development (HUD) in 24 CFR 35.110, Lead-based paint poisoning and prevention in certain residential structures; definitions. *(Air Pollution Control Board; 326 IAC 23-1-7.5)*

SECTION 6. 326 IAC 23-1-7.6 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-7.6 "Clearance examiner" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 7.6. "Clearance examiner" means a person who has been trained by an approved training course provider and licensed by the department to perform clearance examinations. *(Air Pollution Control Board; 326 IAC 23-1-7.6)*

SECTION 7. 326 IAC 23-1-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-9 "Common area group" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 9. "Common area **group"** means **a group of common areas that are similar in design, construction, and function or** a portion of a building that is generally accessible to all occupants or users. The ~~term includes,~~ **areas include,** but ~~is~~ **are** not limited to, the following:

(1) A hallway.
(2) A stairway.
(3) A laundry room.
(4) A recreational room.
(5) A playground.
(6) A community center.
(7) A garage.
(8) A boundary fence.

(Air Pollution Control Board; 326 IAC 23-1-9; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1433; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 8. 326 IAC 23-1-10 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-10 "Completion date" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 10. "Completion date" means **the date by which** a final visual inspection ~~has~~ **and clearance sampling have** been completed by the Indiana licensed risk assessor or inspector, ~~it is~~ **and the risk assessor or inspector has** determined that no dust, debris, or residue is present in the work area, and warning signs and demarcation can be removed. *(Air Pollution Control Board; 326 IAC 23-1-10; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1433; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 9. 326 IAC 23-1-11 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-11 "Component or building component" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 11. "Component or building component" means a specific design or structural element or fixture of a building, residential dwelling, or child-occupied facility that is distinguished from each other by form, function, and location, including the following:

(1) The term includes, but is not limited to, the following interior components:
(A) Ceilings.
(B) Crown molding.
(C) Walls.
(D) Chair rails.
(E) Doors and door trim.
(F) Floors.
(G) Fireplaces.
(H) Radiators and other heating units.
(I) Shelves and shelf supports.
(J) Stair treads, stair risers, stair stringers, newel posts, railing caps, and balustrades.
(K) Windows and trim, including sashes, window heads, jambs, sills and stools, and troughs.
(L) Built-in cabinets.
(M) Columns and beams.
(N) Bathroom vanities.
(O) Counter tops.
(P) Air conditioners.
(Q) Baseboards.
(R) Pipes.

(2) The term includes, but is not limited to, the following exterior components:
(A) Painted roofing.
(B) Chimneys.
(C) Flashing.
(D) Gutters and down spouts.
(E) Ceilings.
(F) Soffits, fascias, rake boards, corner boards, and bulkheads.
(G) Doors and door trim.
(H) Fences.
(I) Floors and joists.
(J) Lattice work.
(K) Railings and railing caps, handrails, stair risers, treads, stair stringers, columns, or balustrades.
(L) Window sills or stools, troughs, casings, sashes, and wells.
(M) Siding.
(N) Air conditioners.
(O) Porch floors.

(Air Pollution Control Board; 326 IAC 23-1-11; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1433; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 10. 326 IAC 23-1-11.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-11.5 "Concentration" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 11.5. "Concentration" means the amount of a specific substance contained within a larger mass. For example, the amount of lead, in micrograms per gram or parts per million by weight, in a sample of dust or soil is the concentration of lead in the sample. *(Air Pollution Control Board; 326 IAC 23-1-11.5)*

SECTION 11. 326 IAC 23-1-12.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-12.5 "Contractor" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 12.5. "Contractor" means:
(1) a company;
(2) a partnership;
(3) a corporation;
(4) a sole proprietorship;
(5) an association; or
(6) other business entity;
that performs lead-based paint abatement to which the department has issued a license under 326 IAC 23-2. *(Air Pollution Control Board; 326 IAC 23-1-12.5)*

SECTION 12. 326 IAC 23-1-17 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-17 "Deteriorated paint" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 17. "Deteriorated paint" means:
(1) any interior or exterior paint **or other coating** that is cracking, ~~flaking,~~ chipping, peeling, or **chalking; or**
(2) any paint or coating located on an interior or exterior surface or fixture;
that is otherwise ~~separating~~ **damaged or separated** from the substrate. ~~of a building component.~~ *(Air Pollution Control Board; 326 IAC 23-1-17; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1434; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 13. 326 IAC 23-1-21 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-21 "Dripline" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 21. "Dripline" means the ~~farthest extended point around a foundation where water drips off the building onto the ground, including, but not limited to, gutters, overhangs, soffits, and porches.~~ **area within three (3) feet surrounding the perimeter of a building.** *(Air Pollution Control Board; 326 IAC 23-1-21; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1434; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 14. 326 IAC 23-1-21.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-21.5 "Dust-lead hazard" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 21.5. (a) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding forty (40) micrograms per square foot on floors or two hundred fifty (250) micrograms per square foot on interior window sills based on wipe samples.

(b) A dust-lead hazard is present in a residential dwelling or child occupied facility:
(1) in a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than forty (40) micrograms per square foot for floors and two hundred fifty (250) micrograms per square foot for interior window sills;
(2) on floors and interior window sills, in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one (1) sampled residential unit on the property; and
(3) on floors and interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one (1) sampled common area in the same common area group on the property.
(Air Pollution Control Board; 326 IAC 23-1-21.5)

SECTION 15. 326 IAC 23-1-26.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-26.5 "Environmental intervention blood lead level" or "EIBLL" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 26.5. "Environmental intervention blood lead level" or "EIBLL" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of:
(1) ten (10) micrograms of lead per deciliter of whole blood for one (1) venous test; or
(2) fifteen (15) to nineteen (19) micrograms of lead per deciliter of whole blood in two (2) consecutive tests taken three (3) to four (4) months apart.
(Air Pollution Control Board; 326 IAC 23-1-26.5)

SECTION 16. 326 IAC 23-1-27 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-27 "Facility" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 27. "Facility" means any ~~institutional, commercial, public, industrial, or residential building or structure.~~ **target housing or child-occupied facility.** *(Air Pollution Control Board; 326 IAC 23-1-27; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1435; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 17. 326 IAC 23-1-27.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-27.5 "Friction surface" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 27.5. "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, window, floor, and stair surfaces. *(Air Pollution Control Board; 326 IAC 23-1-27.5)*

SECTION 18. 326 IAC 23-1-32.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-32.1 "Impact surface" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 32.1. "Impact surface" means any interior or exterior surface that is subject to damage by repeated sudden force,

including parts of door frames. *(Air Pollution Control Board; 326 IAC 23-1-32.1)*

SECTION 19. 326 IAC 23-1-32.2 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-32.2 "Inspector" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 32.2. "Inspector" means a person who has been trained by an approved training course provider and licensed by the department to conduct inspections. A licensed inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing. *(Air Pollution Control Board; 326 IAC 23-1-32.2)*

SECTION 20. 326 IAC 23-1-34 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-34 "Interim controls" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 34. "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including the following:

(1) Specialized cleaning.

(2) Repairs.

(3) Maintenance.

(4) Painting.

(5) Clearance.

~~(5)~~ **(6)** Temporary containment.

~~(6)~~ **(7)** Ongoing monitoring of lead-based paint hazards or potential hazards.

~~(7)~~ **(8)** The establishment and operation of management and resident education programs.

(Air Pollution Control Board; 326 IAC 23-1-34; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1435; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 21. 326 IAC 23-1-34.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-34.5 "Interior window sill" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 34.5. "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room. *(Air Pollution Control Board; 326 IAC 23-1-34.5)*

SECTION 22. 326 IAC 23-1-34.8 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-34.8 "Lead abated waste" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 34.8. "Lead abated waste" means lead or lead contaminated materials removed from an abatement project. *(Air Pollution Control Board; 326 IAC 23-1-34.8)*

SECTION 23. 326 IAC 23-1-48.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-48.5 "Loading" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 48.5. "Loading" means the quantity of a specific substance present per unit of surface area. For example, the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters equals the loading. *(Air Pollution Control Board; 326 IAC 23-1-48.5)*

SECTION 24. 326 IAC 23-1-52 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-52 "Paint in poor condition" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 52. "Paint in poor condition" means:

(1) more than ~~ten (10)~~ **twenty (20)** square feet of deteriorated paint on exterior components with large surface areas such as walls, ceilings, floors, and doors;

(2) more than two (2) square feet of deteriorated paint on interior components with large surface areas, such as walls, ceilings, floors, and doors; or

(3) more than ten percent (10%) of the total surface area of the component is deteriorated on interior or exterior components with small surface areas, such as window sills, baseboards, soffits, and trim.

(Air Pollution Control Board; 326 IAC 23-1-52; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1438; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 25. 326 IAC 23-1-52.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-52.5 "Paint-lead hazard" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 52.5. (a) "Paint-lead hazard" means any one (1) of the following:

(1) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface, including the interior window sill or floor, are equal to or greater than the dust-lead hazard levels identified in this rule.

(2) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from

a related building component including a door knob that knocks into a wall or a door that knocks against its door frame.

(3) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(4) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(b) Effective June 1, 1999, pursuant to Section 406(b) of the TSCA, persons who perform renovations shall provide the owner and occupants of the unit with a lead hazard information pamphlet "Protect Your Family from Lead in Your Home"* under all of the following conditions:

(1) The renovation is to target housing.

(2) The renovation is for compensation, including money or services.

(3) The renovation will disturb more than two (2) square feet of paint per component.

The renovator shall obtain from the owner a written acknowledgment that the owner has received the pamphlet. Lead abatement work performed by people on their own property is excluded from the requirements of this subsection.

***Copies of the lead hazard information pamphlet, in bulk, may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or the National Lead Information Center at (800) 424-LEAD. Single copies are also available at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 23-1-52.5)*

SECTION 26. 326 IAC 23-1-54.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-54.5 "Play area" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 54.5. "Play area" means an area of frequent soil contact by children six (6) years of age or younger as indicated by, but not limited to, such factors as the presence of play equipment, including sand boxes, swing sets, and sliding board, toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners. *(Air Pollution Control Board; 326 IAC 23-1-54.5)*

SECTION 27. 326 IAC 23-1-55.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-55.5 "Project designer" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 55.5. "Project designer" means a person who has been trained by an approved training course provider and licensed by the department to prepare abatement project designs, occupant protection plans, and abatement reports. *(Air Pollution Control Board; 326 IAC 23-1-55.5)*

SECTION 28. 326 IAC 23-1-58.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-58.5 "Renovation" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 58.5. "Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces unless that activity is performed as part of an abatement. *(Air Pollution Control Board; 326 IAC 23-1-58.5)*

SECTION 29. 326 IAC 23-1-58.7 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-58.7 "Residential building" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 58.7. "Residential building" means a building containing one (1) or more residential dwellings. *(Air Pollution Control Board; 326 IAC 23-1-58.7)*

SECTION 30. 326 IAC 23-1-60.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-60.1 "Risk assessor" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 60.1. "Risk assessor" means a person who has been trained by an approved training course provider and licensed by the department to conduct inspections, lead-hazard screens, and risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing. *(Air Pollution Control Board; 326 IAC 23-1-60.1)*

SECTION 31. 326 IAC 23-1-60.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-60.5 "Room" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 60.5. "Room" means a separate part of the inside of a building, including a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six (6) inches from an intersecting wall. Half

walls or bookcases are room separators, if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room. *(Air Pollution Control Board; 326 IAC 23-1-60.5)*

SECTION 32. 326 IAC 23-1-60.6 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-60.6 "Soil-lead hazard" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 60.6. (a) "Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding four hundred (400) parts per million in a play area or average of one thousand two hundred (1,200) parts per million of bare soil in the rest of the yard based on soil samples.

(b) A soil-lead hazard is present:
(1) in a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than four hundred (400) parts per million; or
(2) in the rest of the yard when the arithmetic mean lead concentration from a composite sample or composite samples of bare soil from the rest of the yard, including nonplay areas, for each residential building on a property equal to or greater than one thousand two hundred (1,200) parts per million.

(c) If the soil is removed, the soil:
(1) shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than four hundred (400) parts per million.
(2) that is removed shall not be used as top soil at another residential property or child-occupied facility.
(Air Pollution Control Board; 326 IAC 23-1-60.6)

SECTION 33. 326 IAC 23-1-61.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-61.5 "Soil sample" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 61.5. "Soil sample" means a sample collected in a representative location using ASTM E 1727 "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques*".

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 23-1-61.5)*

SECTION 34. 326 IAC 23-1-62.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-62.5 "Supervisor" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 62.5. "Supervisor" means a person who has been trained by an approved training course provider, licensed by the department to supervise and conduct abatements, and prepare occupant protection plans and abatement reports. *(Air Pollution Control Board; 326 IAC 23-1-62.5)*

SECTION 35. 326 IAC 23-1-62.6 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-62.6 "Surface-by-surface investigation" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 62.6. "Surface-by-surface investigation" means an investigation of an entire target housing or child-occupied facility to determine the presence of lead-based paint as described in Chapter 7, Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing, June 1995, U.S. Department of Housing and Urban Development (HUD)*.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D. C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 23-1-62.6)*

SECTION 36. 326 IAC 23-1-63 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-63 "Target housing" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 63. "Target housing" means housing constructed before January 1, 1978. The term does not include the following:
(1) Housing for the elderly or individuals with disabilities that is not occupied by or expected to be occupied by a child six (6) years of age or younger.
(2) A ~~building without a bedroom.~~ **zero-bedroom dwelling.**
(Air Pollution Control Board; 326 IAC 23-1-63; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1439; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 37. 326 IAC 23-1-64 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-1-64 "Third-party examination" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 64. "Third-party examination" means ~~an~~ **a U.S. EPA developed** examination administered by:

(1) the department or its designated representative; **or**

(2) U.S. EPA or an authorized state or tribe;

as a licensure requirement as required under this article for inspectors, risk assessors, and supervisors. *(Air Pollution Control Board; 326 IAC 23-1-64; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1439; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 38. 326 IAC 23-1-69.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-69.5 "Weighted arithmetic mean" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 69.5. (a) "Weighted arithmetic mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. The types of samples include the following:

(1) A single surface sample is comprised of a single subsample.

(2) A composite sample may contain from two (2) to four (4) subsamples of the same area as each other and of each single surface sample in the composite.

(b) The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples:

(1) the weighted arithmetic mean of a single surface sample containing sixty (60) micrograms per square foot;

(2) a composite sample of three (3) subsamples containing one hundred (100) micrograms per square foot; and

(3) a composite sample of four (4) subsamples containing one hundred ten (110) micrograms per square foot.

The equation is:

(60 + (3 * 100) + (4 * 110)) / (1 + 3 + 4) = 100 micrograms per square foot

(Air Pollution Control Board; 326 IAC 23-1-69.5)

SECTION 39. 326 IAC 23-1-69.6 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-69.6 "Window trough or window well" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 69.6. "Window trough or window well" means for a double-hung window, the portion of the exterior window sill between the interior window sill or stool and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. *(Air Pollution Control Board; 326 IAC 23-1-69.6)*

SECTION 40. 326 IAC 23-1-69.7 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-69.7 "Wipe sample" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 69.7. "Wipe sample" means a sample collected by wiping a representative surface of known area as determined by ASTM E 1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques*, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust*".

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 23-1-69.7)*

SECTION 41. 326 IAC 23-1-71 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-1-71 "Worker" defined
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 22-8-1.1

Sec. 71. "Worker" means a person who has been trained by an approved training course provider and licensed by the department to perform abatements. *(Air Pollution Control Board; 326 IAC 23-1-71)*

SECTION 42. 326 IAC 23-2-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-1 Applicability
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-14-2-2; IC 13-17-14; IC 22-8-1.1

Sec. 1. (a) A person who engages in lead-based paint activities must obtain a license under this article. The department may issue a license for the following disciplines:

(1) Inspector.

(2) Risk assessor.

(3) Project designer.
(4) Supervisor.
(5) Worker.
(6) Contractor.
(7) Clearance examiner.

(b) This article does not apply to the following:
(1) A person conducting an inspection under the authority of IC 22-8-1.1 (the Indiana Occupational, Safety, and Health Act).
(2) A person who performs lead-based paint activities within a residential dwelling that the person owns, unless the residential dwelling is occupied by:
(A) a person, other than the owner or the owner's immediate family, while these activities are being performed; or
(B) a child who:
(i) is six (6) years of age or younger; and
(ii) resides in the building and has been identified as having an ~~elevated~~ **environmental intervention** blood lead level.

(c) This article may not be construed as requiring the abatement of lead-based paint hazards in a child-occupied facility or target housing.

(d) All persons engaging in lead-based paint activities shall comply with work practice standards as set forth in 326 IAC 23-4. *(Air Pollution Control Board; 326 IAC 23-2-1; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1440; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 43. 326 IAC 23-2-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-3 Licensing; qualifications
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 3. (a) To become licensed by the department as an inspector, risk assessor, project designer, supervisor, ~~or~~ worker, **or clearance examiner,** the applicant must do the following:
(1) Successfully complete an ~~Indiana~~ approved lead-based paint course in the appropriate discipline and receive a certificate of training from an ~~Indiana~~ approved course provider.
(2) Have attended an Indiana lead-based paint two (2) hour awareness course, if the approved lead-based paint course in subdivision (1) is not an Indiana-approved course.
~~(2)~~ **(3)** Meet or exceed the experience and education requirements for each desired discipline as listed in subsection (b).
~~(3)~~ **(4)** For inspector, risk assessor, and supervisor applicants, pass the third-party examination in the appropriate discipline. ~~offered by the department or its designated representative.~~
(5) Notwithstanding subdivisions (1) through (4), an applicant may follow the reciprocity provisions in section 6.5 of this rule.

(b) At a minimum, the following experience, education requirements, and course work must be fulfilled for each desired discipline:
(1) Worker **and clearance examiner** applicants ~~have no additional education or experience requirements other than under~~ **must comply with** subsection (a)(1).
(2) Inspector applicants shall have a high school diploma or general equivalency diploma (GED).
(3) Risk assessor applicants shall take and pass the inspector and risk assessor courses and pass all required examinations, including third-party examinations. Applicants must meet any one (1) of the following combinations of education and experience:
(A) Bachelor's degree and one (1) year of experience.
(B) Associate's degree and two (2) years of experience.
(C) A high school diploma or GED and three (3) years of experience.
Required experience must be in a related field, ~~such as~~ **including** lead, asbestos, environmental remediation work, or construction.
(4) Supervisor applicants shall take and pass the supervisor courses and all required examinations, including third-party exams, and meet one (1) of the following:
(A) One (1) year of experience as a ~~certified~~ **licensed** lead-based paint abatement worker.
(B) Two (2) years of experience in a related field, ~~such as~~ **includes** lead, asbestos, environmental remediation, or work in the construction trades.
(5) Project designer applicants are required to take and pass the supervisor and project designer courses and pass all the required examinations, including third party examinations and shall have:
(A) a bachelor's degree in engineering, architecture, or a related profession and one (1) year of experience in building construction design or a related field; or
(B) four (4) years of experience in building construction and design or a related field.

(c) A person who enters into a contract requiring the person to execute lead-based paint ~~activities~~ **abatement** to be conducted for compensation shall ~~hold~~ **be** a ~~lead-based paint activities~~ contractor ~~license.~~ **licensed under this article.** To become licensed by the department as a lead-based paint activities contractor, the applicant must comply with the following:
(1) The applicant must meet or have a designated representative who meets all of the following:
(A) Successfully complete an approved lead-based paint supervisor course, receive a certificate of training from an ~~Indiana-approved~~ **approved** training course provider, and take and pass a third-party examination.
(B) One (1) year of experience as a licensed lead-based paint abatement worker or two (2) years of experience in a related field, ~~such as~~ **to include** lead, asbestos, environmental remediation, or work in the construction trades.

(2) The contractor may not allow an agent or employee of the contractor to:

(A) exercise control over a lead-based paint activities project;

(B) come into contact with lead-based paint in connection with lead-based paint activities; or

(C) engage in lead-based paint activities;

unless the agent or employee is licensed under this rule.

(3) The contractor and all of its agents and employees shall, when performing lead-based paint activities projects, comply with the work practice standards under 326 IAC 23-4 for performing the appropriate lead-based paint activities.

(4) Each contractor is required to have at least one (1) licensed lead-based paint project supervisor, responsible for direct supervision of workers, in the work area of the lead-based paint activity project. Lead-based paint workers shall have access to the project supervisors throughout the duration of the project.

(5) Each contractor shall ensure that the current lead-based paint program license belonging to each project supervisor and worker is kept on the jobsite during all lead-based paint activities. The lead-based paint licenses shall be kept outside the work area, and shall be available for inspection by the department.

~~(6) For the purpose of fulfilling the requirements of this rule, collecting or analyzing air samples for determining the completion of the lead-based paint project shall not be done by a person employed by the lead-based paint contractor or a partner or subsidiary entity thereof, implementing a lead-based paint project.~~

~~(7)~~ **(6)** Contractor applicants must themselves have or have a designated representative who has:

(A) one (1) year of experience as a ~~certified~~ **licensed** lead-based paint abatement worker or

~~(B)~~ at least two (2) years of experience in a related field, ~~such as~~ **to include** lead, asbestos, environmental remediation, or work in the construction trades; and

~~(C)~~ **(B)** successfully completed an approved lead-based paint supervisor course, received a certificate of training from an ~~Indiana-approved~~ **approved** training course provider, and taken and passed a third-party examination.

~~(d) The following documents shall be submitted to the department to demonstrate compliance with the requirements of this section:~~

~~(1) Official academic transcripts or diplomas to demonstrate compliance with the education requirements.~~

~~(2) Resumes, letters of reference, or documentation of work experience to demonstrate compliance with the work experience requirements.~~

~~(3) Certificates of training from lead-specific or other related training courses, issued by approved training course providers, to demonstrate compliance with the training requirements.~~

~~(e)~~ **(d)** To take the third-party examination, a person shall:

(1) successfully complete an ~~Indiana~~ approved training course in the appropriate discipline;

(2) receive a certificate of training from an approved training course provider; and

(3) meet or exceed the education and experience requirements in subsections (b) and (c).

~~(f)~~ **(e)** An applicant may take the third-party examination, if required, no more than three (3) times within six (6) months of receiving a certificate of training.

~~(g)~~ **(f)** If a person does not pass the third-party examination and receive a license within six (6) months of receiving his or her certificate of training, the person must retake the appropriate initial course from an ~~Indiana-approved~~ **approved** training course provider before reapplying for a license from the department.

~~(h)~~ **(g)** Any individual who has had ~~an eighteen (18)~~ **more than a thirty-six (36)** month time lapse between any two (2) training courses of the same discipline shall:

(1) be required to attend an initial training course for the discipline in which he or she is seeking licensing; **and**

(2) take the third-party examination required for the discipline in which he or she is seeking licensure.

(h) The following documents shall be submitted to the department to demonstrate compliance with the requirements of this section:

(1) Official academic transcripts or diplomas to demonstrate compliance with the education requirements.

(2) Resumes, letters of reference, or documentation of work experience to demonstrate compliance with the work experience requirements.

(3) Certificates of training from lead-specific or other related training courses, issued by approved training course providers, to demonstrate compliance with the training requirements.

(4) Official documentation indicating the passage of a third-party exam.

(Air Pollution Control Board; 326 IAC 23-2-3; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1441; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 44. 326 IAC 23-2-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-4 License; application

Authority: IC 13-17-14-5
Affected: IC 13-17-14

Sec. 4. (a) Any person applying for an initial lead-based paint license from the department as a lead-based paint inspector, a risk assessor, a project designer, a supervisor, a worker, **a clearance examiner,** or a contractor shall do the following:

(1) Submit a completed application on forms provided by the department.
(2) Submit a copy of all required documents, as provided in section 3(d) of this rule, that the person meets the experience, education, and training requirements in section 3 of this rule, including that the applicant successfully completed the approved initial and any requisite refresher training courses.
(3) Receive passing scores on all written examinations for the courses.
(4) Pay the license application fee specified in section 8 of this rule.
(5) For persons applying for inspector, risk assessor, **project designer,** or supervisor licenses, provide proof of passing the third-party examination.

(b) Any person applying for an initial license from the department to conduct lead-based paint activities as a contractor shall do the following:
(1) Submit a completed application on forms provided by the department, which shall include a signed statement that the person has read and understands this rule and 40 CFR 745 "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule"*.
(2) Submit a copy of all required documents, as provided in section 3(d) of this rule, indicating that the applicant or the applicant's designated representative meets the experience, education, and training requirements in section 3 of this rule, including having successfully completed the approved initial and any requisite refresher training courses for lead-based paint project supervisor and received passing scores on all written examinations for such courses, including third-party examinations.
(3) Submit a complete list of contracts for the prior ~~twelve (12)~~ **thirty-six (36)** months for lead-based paint projects, including names, addresses, and telephone numbers of persons for whom projects were performed.
(4) Submit an up-to-date copy of the contractor's written standard operating procedures that include current compliance procedures.
(5) Submit a description of any lead-based paint projects that the contractor conducted that were prematurely terminated or not completed, including the circumstances surrounding the termination or failure to complete.
(6) Submit a list of any contractual penalties **related to lead-based paint activities** that the contractor has paid for noncompliance with contract specifications.
(7) Submit copies of any and all:
(A) warning letters;
(B) notices and orders of the commissioner;
(C) agreed orders;
(D) citations;
(E) notices of violation; or
(F) findings of violation;
levied against the contractor by any federal, state, or local government agency for violations of regulations or other laws pertaining to lead-based paint activities, including names and locations of the projects, the dates, and a description of how the allegations were resolved.
(8) Submit a description detailing all legal proceedings, lawsuits, warning letters to supervisors from the department, or claims that have been filed or levied against the contractor or any of the contractor's past or present employees, while employed by the contractor, for lead-based paint related activities.
(9) Submit documentation of the contractor's financial responsibility with a current certificate of insurance with at least five hundred thousand dollars ($500,000) of liability insurance. The company offering the insurance coverage must be recognized or licensed by the Indiana department of insurance.
(10) Pay the license application fee specified in section 8 of this rule.

(c) If the department determines the information on the application to be incomplete, the department shall request in writing that the applicant submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire. ~~and~~ The **application** fee is not transferable **and nonrefundable.**

(d) In addition to the requirements of subsections (a) through (b), the department may require an applicant or a designated representative of a contractor, in the case of subsection (b), to take an examination administered by the department. The examination shall cover only the discipline for which the applicant is seeking a license. The commissioner shall deny the application if the applicant does not receive a passing score of seventy percent (70%). If the department denies the application, the certificate of training is invalid and the applicant must retake and pass the initial training course for the discipline for which the applicant is seeking a license, and any subsequent third-party examination.

(e) The applicant shall provide two (2) copies of a clear and recent one and one-half (1½) inch by one and one-half (1½) inch identifying color photograph at the time of application. ~~to be attached to the face of the lead-based paint license prior to issuance of the license by the department.~~

(f) The department shall review the application and shall make a determination as to the eligibility of the person. The department shall issue a lead-based paint program license to any person who fulfills the requirements established by this rule. **The lead-based paint program license shall expire three (3) years after issuance.** The department may deny an application for a lead-based paint program license based on any of the applicable criteria listed in section 6 of this rule or for failure to comply with any other provision of this rule.

~~(g) Individuals who have received lead-based paint activities training between October 1, 1990, and March 1, 1999, shall be eligible for licensing under the following alternative procedures:~~

~~(1) Applicants for license as an inspector, risk assessor, or supervisor shall:~~

~~(A) demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity;~~

~~(B) demonstrate that the applicant meets or exceeds the education and experience requirements in section 3 of this rule;~~

~~(C) successfully complete an Indiana-approved refresher training course for the appropriate discipline;~~

~~(D) pass a third-party examination administered by the department or its designated representative for the appropriate discipline;~~

~~(E) submit a completed application on forms provided by the department; and~~

~~(F) pay the license application fee specified in section 8 of this rule.~~

~~(2) Applicants for licensure as an abatement worker or project designer shall:~~

~~(A) demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity;~~

~~(B) demonstrate that the applicant meets the education and experience requirements in section 3 of this rule;~~

~~(C) successfully complete an Indiana-approved refresher training course for the appropriate discipline;~~

~~(D) submit a completed application on forms provided by the department; and~~

~~(E) pay the license application fee specified in section 8 of this rule.~~

~~(3) This subsection remains in effect for twelve (12) months from the date that this rule becomes effective. After that date, all applicants under this rule must comply with all other provisions of this rule.~~

~~(h)~~ **(g)** Applications must be completed in writing and submitted for processing. The department shall not process applications on a walk-in basis or process applications over the telephone. If the license is approved, the license will be sent to the applicant via the U.S. Postal Service to the address listed on the application.

~~*These documents are~~ ***This document is** incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 23-2-4; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1442; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3108)*

SECTION 45. 326 IAC 23-2-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-5 Renewal of lead-based paint license

Authority: IC 13-17-14-5
Affected: IC 13-17-14

Sec. 5. (a) Any person seeking to renew a license as a lead-based paint inspector, risk assessor, project designer, supervisor, worker, **clearance examiner,** or contractor shall meet the following requirements:

(1) Have possessed a valid license in the same discipline in which renewal is being sought within the previous six (6) months.

(2) Have attended, within the previous twelve (12) months, an approved refresher training course for the discipline in which the person was previously licensed. The following disciplines have additional requirements:

(A) A risk assessor shall take both the inspector refresher course and the risk assessor refresher course.

(B) A project designer shall take both the supervisor refresher course and the project designer refresher training course.

(3) Have taken and passed a third-party examination **and maintained all required refresher training since initial licensure,** as required for inspector, risk assessor, or project supervisor.

(4) Submit a completed application on forms provided by the department and include a copy of:

(A) the certificates of training indicating that the person successfully completed the refresher training course and passed the written examination; and

(B) for inspectors, risk assessors, and supervisors, provide proof of having passed the third-party examination.

(5) For a contractor, submit a complete list of contracts for the prior thirty-six (36) months for lead-based paint activities, including names, addresses, and telephone numbers of persons for whom projects were performed.

~~(5)~~ **(6)** Pay the license application fee as specified in section 8 of this rule.

(b) Any person seeking to renew a lead-based paint license as a contractor shall:

(1) include updated information in the application, if any information has changed during the previous ~~twelve (12)~~ **thirty-six (36)** months; ~~The contractor shall~~

(2) routinely examine and update the standard operating procedures manual to reflect the compliance assurance methodologies that meet current federal, state, and local regulations or other laws pertaining to lead-based paint; **and**

(3) submit a complete list of contracts for the prior thirty-six (36) months for lead-based paint projects, including names, addresses, and telephone numbers of persons for whom projects were performed.

(c) The applicant shall provide two (2) copies of a clear and

recent one and one-half (1½) inch by one and one-half (1½) inch identifying color photograph at the time of application. ~~to be attached to the face of the lead-based paint license prior to issuance of the license by the department.~~

(d) The department shall review the application and shall make a determination as to the eligibility of the person. The department shall issue a lead-based paint license renewal to any person who fulfills the requirements established in this rule. **The lead-based paint program license shall expire three (3) years after issuance.** However, the department may deny an application for renewal of a lead-based paint license based on any of the criteria listed in section 6 of this rule, as applicable, or for failure to comply with any other provision of this rule.

(e) Any individual who has had ~~an eighteen (18)~~ **a thirty-six (36)** month time lapse between any two (2) training courses of the same discipline shall:

(1) be required to attend an initial training course for the discipline to which they are seeking to be licensed; **and**

(2) take the third-party examination required for the discipline in which he or she is seeking licensure.

(Air Pollution Control Board; 326 IAC 23-2-5; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1444; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 46. 326 IAC 23-2-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-6 Compliance requirements for lead-based paint activities contractors

Authority: IC 13-17-14
Affected: IC 13-17

Sec. 6. (a) A lead-based paint activities contractor licensed under this rule shall compile records concerning each lead-based paint activities project performed by the lead-based paint activities contractor. The records must include the following information on each lead-based paint activities project:

(1) The name, address, and proof of license of the following:
  (A) The person who supervised the lead-based paint activities project for the lead-based paint activities contractor.
  (B) Each employee or agent of the lead-based paint activities contractor that worked on the project.

(2) The name, address, and signature of each licensed risk assessor or inspector conducting clearance sampling and the date of clearance testing.

(3) The site of the lead-based paint activities project.

(4) A description of the lead-based paint activities project.

(5) The date on which the lead-based paint activities project was started, and the date on which the lead-based paint activities project was completed.

(6) A summary of procedures that were used in the lead-based paint activities project to comply with applicable federal and state standards for lead-based paint activities projects.

(7) A detailed written description of the lead-based paint activities, including the following:
  (A) Methods used.
  (B) Locations of rooms or components where lead-based paint activities occurred.
  (C) Reasons for selecting particular lead-based paint activities methods for each component.
  (D) Any suggested monitoring of encapsulants or enclosures.

(8) The occupant protection plan.

(9) The results of clearance testing and all soil analysis, if applicable, and the name of each federally-recognized laboratory that conducted the analysis. The laboratory **that conducted the analysis** must be recognized by U.S. EPA, pursuant to Section 405(b) of TSCA*, as being capable of performing analyses for lead compounds in paint chips, dust, and soil samples. ~~that conducted the analysis.~~

~~(10) The amount of material containing lead-based paint that was removed from the site of the project.~~

~~(11) The name and address of each disposal site used for the disposal of lead-based paint containing material that was disposed of as a result of the lead-based paint activities project.~~

~~(12)~~ **(10)** A copy of each receipt issued by a disposal site.

(b) A lead-based paint activities contractor shall retain the records compiled under this section concerning a particular lead-based paint activities project for at least three (3) years after the lead-based paint activities project is concluded.

(c) A lead-based paint activities contractor shall make records available to the department upon request.

(d) A lead-based paint activities contractor shall provide a copy of all reports or plans to the building owner who contracted for the services.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 23-2-6; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1444; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 47. 326 IAC 23-2-6.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 23-2-6.5 Lead-based paint license reciprocity

Authority: IC 13-17-14-5
Affected: IC 4-21.5; IC 13-17-14

Sec. 6.5. (a) Any person holding a current U.S. EPA state or tribe authorized lead-based paint program license from

another state, who is applying for an initial Indiana lead-based paint license from the department as a lead-based paint inspector, risk assessor, project designer, supervisor, worker, or clearance examiner under this rule, shall do the following:

(1) Submit a completed application on forms provided by the department.

(2) Submit a copy of all current lead-based paint program licenses.

(3) For persons applying for inspector, risk assessor, project designer, or supervisor licenses, provide proof of having passed the third-party examination.

(4) Have attended an approved Indiana lead-based paint rules awareness course.

(5) Pay the license application fee specified in section 8 of this rule.

(b) Any person holding a current U.S. EPA state or tribe authorized lead-based paint program license, who is applying for an initial Indiana license from the department to conduct lead-based paint activities as a contractor under this rule, shall do the following:

(1) Submit a completed application on forms provided by the department, which shall include a signed statement that the person has read and understands this rule and 40 CFR 745, Lead Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule.

(2) Submit a copy of all U.S. EPA or U.S. EPA state or tribe authorized lead-based paint program licenses and documentation indicating that the applicant or the applicant's designated representative meets the experience, education, and training requirements of section 3 of this rule, including having successfully completed the approved initial and any requisite refresher training courses for lead-based paint project supervisor and received passing scores on all written examinations for such courses, including third-party examinations.

(3) Submit an up-to-date copy of the contractor's written standard operating procedures that include current compliance procedures.

(4) Submit documentation of the contractor's financial responsibility with a current certificate of insurance with at least five hundred thousand dollars ($500,000) of liability insurance. The company offering the insurance coverage must be recognized or licensed by the Indiana department of insurance.

(5) Attended an Indiana lead-based paint two (2) hour awareness course.

(6) Pay the license application fee specified in section 8 of this rule.

(c) If the department determines the information on the application to be incomplete, the department shall request in writing that the applicant submit the missing information. If the information is not submitted within one (1) year of the department receipt of the application, the application will expire and the fee is not transferable.

(d) In addition to the requirements of subsections (a) through (b), the department may require an applicant or a designated representative, to take an examination administered by the department. The examination shall cover only the discipline for which the applicant is seeking licensure. The commissioner shall deny the application if the applicant does not receive a passing score of seventy percent (70%). If the department denies the application, the certificate of training is invalid and the applicant must retake and pass the initial training course for the discipline for which the applicant is seeking a license, and any subsequent third-party examinations.

(e) The applicant shall provide two (2) copies of a clear and recent one and one-half (1½) inch by one and one-half (1½) inch identifying color photograph at the time of application.

(f) The department shall review the application and shall make a determination as to the eligibility of the person. The department shall issue a lead-based paint program license to any person who fulfills the requirements established by this rule. The lead-based paint license shall expire three (3) years after issuance. The department may deny an application for a lead-based paint program license based on any of the applicable criteria listed in section 6 of this rule or for failure to comply with any other provision of this rule.

(g) Applications must be completed in writing and submitted for processing. If the license is approved, the license will be sent to the applicant via the United States Postal Service to the address listed on the application. *(Air Pollution Control Board; 326 IAC 23-2-6.5)*

SECTION 48. 326 IAC 23-2-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-7 Lead-based paint license revocation; denial

Authority: IC 13-17-14-5
Affected: IC 4-21.5; IC 13-17-14

Sec. 7. (a) The department may, under IC 4-21.5, deny an application for a license, reprimand a license, or suspend or revoke a license for any of the following reasons:

(1) Violating any requirement of the following:

(A) This title.

(B) 40 CFR 745 (Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities*.

(C) IC 13-17-14.

(D) Any federal, state, or local lead-based paint regulations.

(2) Falsifying information on an application for a lead-based paint license, including but not limited to, approval records, instructor qualifications, or other approval information.
(3) Violating or failing to meet any requirement specified in this article.
(4) Conducting a lead-based paint project, or related activity, in a manner that is hazardous to the public health.
(5) Performing work requiring a lead paint license at a job site without being in physical possession of initial and current certificates of training or license.
(6) Permitting the duplication or use of one's own lead-based paint license by another person.
(7) Performing work for which a lead-based paint license has not been received.
(8) Obtaining training from a training course provider who does not have the approval to offer training for the particular discipline for which the license was received.
(9) Obtaining training documentation through fraudulent means.
(10) Gaining admission to and completing an approved training curriculum through misrepresentation of admission requirements.
(11) Fraudulently or deceptively obtaining a license or attempts to obtain a license through misrepresentation of certificate of training requirements, third-party examination, or related documents dealing with education, training, professional registration, or experience.
(12) Misrepresenting the extent of a training courses's approval.
(13) Failing to submit required information or notifications in a timely manner.

(b) In addition to the causes in subsection (a), the department may, under IC 4-21.5, reprimand a lead-based paint contractor or suspend or revoke a lead-based paint license if the contractor:
(1) performs work requiring licensure at a jobsite with individuals who are not licensed;
(2) fails to comply with the work practice standards established in 326 IAC 23-4;
(3) misrepresents facts in the contractor's letter of application for a license;
(4) fails to maintain required records; or
(5) fails to comply with federal, state, or local lead-based paint rules, regulations, or statutes.

(c) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(d) If the department finds that a lead-based paint activities project is not being performed in accordance with air pollution control laws or rules adopted by the board, the department may enjoin further work on the lead-based paint project without prior notice or hearing by completing the following procedures:
(1) A notice shall be delivered to:
(A) the lead-based paint activities contractor engaged in the lead-based paint activities project; or
(B) an agent or representative of the lead-based paint activities contractor.
(2) A notice issued under this section must:
(A) specify the violations of law that are occurring on the lead-based paint activities project; and
(B) prohibit further work on the lead-based paint activities project until the specified violations cease and the notice is rescinded by the commissioner.
(3) The contractor shall have fourteen (14) days in which to provide written notification to the department that violations have been corrected.
(4) Not later than ten (10) days after receiving written notification from a contractor that violations specified in a notice issued under this section have been corrected, the commissioner shall issue a determination regarding recission of the notice.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 23-2-7; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1445; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3109)*

SECTION 49. 326 IAC 23-2-8 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-8 Fees
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 8. (a) ~~Upon application~~ **The applicant** for a lead-based paint ~~program~~ license ~~a person~~ shall pay a ~~fee~~ **nonrefundable application for each of the following disciplines** as follows:
(1) Inspector, one hundred fifty dollars ($150).
(2) Risk assessor, one hundred fifty dollars ($150).
(3) Project designer, one hundred **fifty** dollars ~~($100).~~ **($150).**
(4) Supervisor, one hundred fifty dollars ($150).
(5) Worker, **one hundred** fifty dollars ~~($50).~~ **($150).**
(6) Clearance examiner, one hundred fifty dollars ($150).
~~(6)~~ **(7)** Contractor, one hundred fifty dollars ($150).

(b) Fees paid by mail shall be paid by check or money order and shall be made payable to the lead trust fund and sent to the Cashier, Indiana Department of Environmental Management, P.O. Box 7060, Indianapolis, Indiana 46206-7060.

(c) The application fee shall not be:
(1) transferable from one (1) type of lead-based paint license to another;

(2) transferable from one (1) person to another; **or**
(3) transferable to any other type of license or approval issued by the department; ~~or~~
~~(4) refundable;~~
unless requested by the applicant within three (3) days of submittal to the department or prior to processing by the department, whichever is earlier.

(d) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable. ~~or refundable.~~ *(Air Pollution Control Board; 326 IAC 23-2-8; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1446; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 50. 326 IAC 23-2-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-9 Duplicate lead-based paint program licenses
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 9. (a) To replace a lead-based paint program license that has been lost or stolen, a person shall submit a completed application for a duplicate license on a form provided by the department.

(b) The form shall include a statement indicating that the original lead-based paint program license was lost or stolen.

(c) The department shall issue no more than two (2) duplicate licenses to any person in any calendar year.

(d) The application must be submitted in person to the department by the licensee. Two (2) pieces of identification must be shown at the time of application. Acceptable pieces of identification include a valid state-issued driver's license, an Indiana issued identification card, a valid United States passport, or a valid Immigration and Naturalization Service (INS) identification, one (1) of which must include a picture of the applicant. *(Air Pollution Control Board; 326 IAC 23-2-9; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1446; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 51. 326 IAC 23-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-3-1 Applicability
Authority: IC 13-17-14-5
Affected: IC 13-11-2-158; IC 13-17-14; IC 36-1-2-10; IC 36-1-2-23

Sec. 1. (a) A person may apply to the department to be an approved training course provider to offer lead-based paint activities initial or refresher courses in any of the following disciplines:

(1) Inspector.
(2) Risk assessor.
(3) Project designer.
(4) Supervisor.
(5) Worker.
(6) Clearance examiner.

(b) A person may apply to the department to be an approved training course provider to offer an Indiana lead-based paint rules awareness course.

~~(b)~~ **(c)** Training course providers may apply to the department for approval of their lead-based paint activities courses, **Indiana lead-based paint rules awareness course,** or refresher courses pursuant to this rule on or after the effective date of this rule.

~~(c)~~ **(d)** A training course provider shall not provide, offer, or claim to provide approved lead-based paint activities courses **or Indiana lead-based paint rules awareness course** without applying for and receiving approval from the department as required under this rule.

~~(d)~~ **(e)** Section 12 of this rule does not apply to a training course provider that is:
(1) a state;
(2) a unit as defined in IC 36-1-2-23;
(3) a municipal corporation as defined in IC 36-1-2-10; or
(4) an exempt organization under 26 U.S.C. 501(a)*.

***This document is incorporated by reference.** Copies ~~of the United States Code (U.S.C.) are available~~ **may be obtained** from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402. Copies of pertinent sections~~ **20401 or** are available for **review and** copying from Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality, Indiana Government Center-North, Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 23-3-1; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1446)*

SECTION 52. 326 IAC 23-3-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-3-2 Initial and refresher training course and rules awareness course application for approval
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 2. The following procedures shall be followed by a training course provider to receive approval by the department to offer initial or refresher lead-based paint activities courses **or Indiana lead-based paint rules awareness course:**
(1) A training course provider seeking approval for each training course shall submit one (1) written application, per

discipline, for each initial and refresher training course **or rules awareness course** on forms provided by the department. The application for approval shall contain the following information:

(A) The training course provider's name, address, telephone number, and primary contact person.

(B) The name of the training course.

(C) The course agenda or curriculum.

(D) The training course test blueprint for each course.

(E) A letter from the training course provider that clearly indicates how the course meets the applicable requirements of this rule, including the following information:

(i) Length of training in days.

(ii) A description of the facilities and equipment to be used for lecture and hands-on training.

(iii) Amount and type of hands-on training.

(iv) Description of the examinations, including the length, format, and passing score.

(v) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(vi) Topics covered in the course.

(vii) A copy of the quality control plan as defined in 326 IAC 23-1-56.

(viii) A copy of the certificates of training.

(F) If a training course provider uses U.S. EPA-recommended model training materials, the training course manager shall include a statement certifying that the recommended version will be used.

(G) The names and qualifications of the course instructors, including guest instructors, to include academic credentials and field experience.

(H) A detailed statement about the development of the examinations and a copy of the examinations used in the course.

(I) A description and an example of numbered certificates issued to students who complete the course and pass the examination, with the following information:

(i) Name and address of accredited person.

(ii) Discipline of the training course completed.

(iii) Dates of the training course.

(iv) Date of the examination.

(v) An expiration date not to exceed ~~one (1) year~~ **thirty-six (36) months** after the date upon which the person successfully completed the course and passed the examination.

(vi) The name, address, and telephone number of the training course provider who issued the certificate.

(vii) A statement that the person receiving the certificate has completed the requisite training for lead-based paint accreditation.

(viii) A statement that the training course meets the requirements as outlined by Indiana under this rule.

(J) A list of all U.S. EPA authorized and nonapproved states in which the course has received full or contingent approval. Also provide a list of courses directly approved by the U.S. EPA.

(K) A detailed statement of how the training course provider ensures that all requirements for training students be met in the event that:

(i) the instructor does not speak a language understood by all students; or

(ii) the course materials are not in a language understood by all students.

(L) The requirements under clauses (D), (E)(iii) through (E)(v), (E)(vii), (H), and (I)(iv) are not required for the rules awareness course.

(2) If a training course provider's training course materials are not based on U.S. EPA-recommended model training materials or training materials approved by an EPA-approved state or Indian tribe, the training course provider's application for approval shall include the following for each course:

(A) A copy of the student and instructor manuals.

(B) A copy of the course agenda.

(3) A training course provider may apply for approval to offer initial courses or refresher courses in as many disciplines as it chooses. A training course provider may seek approval for additional courses at any time as long as the training course provider can demonstrate that it meets the requirements of this rule.

(4) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the application fee is not transferable or refundable.

(Air Pollution Control Board; 326 IAC 23-3-2; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1447)

SECTION 53. 326 IAC 23-3-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-3-3 Initial training course requirements

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 3. To offer lead-based paint course instruction in any one (1) or all of the disciplines, training course providers must ensure that their courses of study meet, at a minimum, the following training hour requirements and hands-on activities:

(1) The course of study for an inspector must last a minimum of twenty-four (24) training hours. This course of study shall include a minimum of eight (8) hours of hands-on training and shall contain the following course topics:

(A) Role and responsibilities of an inspector.

(B) Background information on lead and its adverse health effects.

(C) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing. This course of study shall include hands-on activities.

(D) Paint, dust, and soil sampling methodologies. This course of study shall include hands-on activities.

(E) Clearance standards and testing, including random

sampling. This course of study shall include hands-on activities.

(F) Preparation of the final inspection report. This course of study shall include hands-on activities.

(G) Record keeping.

~~(H) Employee respiratory protection and personal protective equipment to include the following:~~

~~(i) Classes and characteristics of respirator types.~~

~~(ii) Limitations of respirators.~~

~~(iii) Proper selection, inspection, donning, use, maintenance, and storage procedures for respirators.~~

~~(iv) Methods for field testing of the face piece-to-mouth seal (positive and negative pressure fitting tests).~~

~~(v) Qualitative and quantitative fit testing procedures.~~

~~(vi) Variability between field and laboratory protection factors.~~

~~(vii) Factors that alter respirator fit, for example, facial hair.~~

~~(viii) The components of a proper respiratory protection program.~~

~~(ix) Selection and use of personal protective clothing.~~

~~(x) Use, storage, and handling of nondisposable clothing.~~

~~(I)~~ **(H)** Regulatory review to include the following:

(i) TSCA Title IV*.

(ii) Occupational Safety and Health Administration (OSHA) respirator requirements found at 29 CFR 1926.62~~*~~**.

(iii) Applicable local, state, and federal regulations and guidance that pertain to lead-based paint and lead-based paint activities.

(2) The course of study for a risk assessor must last a minimum of sixteen (16) training hours and shall include a minimum of four (4) hours of hands-on training and contain the following course topics:

(A) Role and responsibilities of a risk assessor.

(B) Collection of background information to perform a risk assessment.

(C) Sources of environmental lead contamination, ~~such as~~ **including** paint, surface dust and soil, water, air, packaging, and food.

(D) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards. The course of study includes hands-on activities.

(E) Lead hazard screen protocol.

(F) Sampling for other sources of lead exposure. The course of study includes hands-on activities.

(G) Interpretation of lead-based paint and other lead sampling results, including all applicable state or federal guidance or regulations pertaining to lead-based paint hazards. The course of study includes hands-on activities.

(H) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(I) Preparation of a final risk assessment report.

(J) Regulatory review, including, at minimum, the following:

(i) OSHA lead construction standard found at 29 CFR 1926.62*.

(ii) U.S. EPA Lead-Based Paint Poisoning Prevention rule found at 40 CFR 745*.

(iii) All applicable local, state, and federal regulations.

(3) The course of study for a supervisor must last a minimum of thirty-two (32) training hours, and shall include a minimum of eight (8) hours of hands-on training, and contain the following course topics:

(A) Role and responsibilities of a supervisor.

(B) Background information on lead and its adverse health effects.

(C) Regulatory review to include, at minimum, the following:

(i) OSHA lead construction standard found at 29 CFR 1926.62* (Occupational Safety and Health Administration, Occupational Exposure to Lead).

(ii) U.S. EPA Lead-Based Paint Poisoning Prevention rule found at 40 CFR 745*.

(iii) All applicable local, state, and federal regulations.

(D) Liability and insurance issues relating to lead-based paint abatement.

(E) Risk assessment and inspection report interpretation. This course of study includes hands-on activities.

(F) Development and implementation of an occupant protection plan and abatement report.

(G) Lead-based paint hazard recognition and control. This course of study includes hands-on activities.

(H) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices. This course of study includes hands-on activities.

(I) Interior dust abatement and cleanup or lead-based paint hazard control and reduction methods. This course of study includes hands-on activities.

(J) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods. This course of study includes hands-on activities.

(K) Clearance standards and testing.

(L) Cleanup and waste disposal.

(M) Record keeping.

(N) Employee personal respiratory protection and personal protective equipment, including the following:

(i) Classes and characteristics of respirator types.

(ii) Limitations of respirators.

(iii) Proper selection, inspections, donning, use, maintenance, and storage procedures for respirators.

(iv) Methods for field testing of the face piece-to-mouth seal (positive and negative pressure fitting tests).

(v) Qualitative and quantitative fit testing procedures.

(vi) Variability between field and laboratory protection factors.

(vii) Factors that alter respirator fit, for example, facial hair.

(viii) The components of a proper respiratory protection program.

(ix) Selection and use of personal protective clothing.

(x) Use, storage, and handling of nondisposable clothing.

(xi) Regulations covering personal protective equipment.

(O) Respiratory protection programs and medical surveillance programs.

(4) The course of study for a project designer must last a minimum of eight (8) training hours and contain the following course topics:

(A) Role and responsibilities of a project designer.

(B) Development and implementation of an occupant protection plan for large scale abatement projects.

(C) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(D) Interior dust abatement and cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(E) Clearance standards and testing for large-scale abatement projects.

(F) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large-scale abatement projects.

(G) OSHA requirements for lead sites.

(H) Relevant federal, state, and local regulatory requirements with a discussion of procedures and standards.

~~(I) Employee personal protective equipment, including the following:~~

~~(i) Classes and characteristics of respiratory types.~~

~~(ii) Limitations of respirators.~~

~~(iii) Proper selection, inspection, donning, use, maintenance, and storage procedures.~~

~~(iv) Methods for field testing of the face piece-to-mouth seal (positive and negative pressure fitting tests).~~

~~(v) Qualitative and quantitative fit testing procedures.~~

~~(vi) Variability between field and laboratory protection factors.~~

~~(vii) Factors that alter fit, for example, facial hair.~~

~~(viii) Components of a proper respiratory protection program.~~

~~(ix) Selection and use of personal protective clothing.~~

~~(x) Use, storage, and handling of nondisposable clothing.~~

(5) The course of study for an abatement worker must last a minimum of sixteen (16) training hours. This course of study includes a minimum of eight (8) hours of hands-on activities and contain the following course topics:

(A) Role and responsibilities of an abatement worker.

(B) Background information on lead and its adverse health effects.

(C) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement.

(D) Lead-based paint hazard recognition and control. This course of study includes hands-on activities.

(E) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices, with hands-on activities.

(F) Interior dust abatement methods and cleanup or lead-based paint hazard reduction, with hands-on activities.

(G) Soil and exterior dust abatement methods or lead-based paint hazard reduction, with hands-on activities.

(H) Employee personal protective equipment, including the following:

(i) Classes and characteristics of respirator types.

(ii) Limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures.

(iii) Methods for field testing of the face piece-to-mouth seal (positive and negative pressure fitting tests).

(iv) Qualitative and quantitative fit testing procedures.

(v) Variability between field and laboratory protection factors.

(vi) Factors that alter respirator fit, for example, facial hair.

(vii) The components of a proper respiratory protection program.

(viii) Selection and use of personal protective clothing, use, storage, and handling of nondisposable clothing.

(ix) Regulations covering personal protective equipment.

(I) Hazards encountered during abatement activities and how to deal with them, including the following:

(i) Electrical hazards.

(ii) Heat stress.

(iii) Air contaminants other than lead.

(iv) Fire and explosion hazards.

(v) Scaffold and ladder hazards.

(vi) Slips, trips, and falls.

(vii) Confined spaces.

(J) Applicable federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(6) The course of study for a clearance examiner must last a minimum of five (5) training hours. This course of study shall follow the U.S. EPA approved Lead Sampling Technician Training Course, including the use of all guidelines, manuals, and appendices and contain the following course topics:

(A) Introduction and background shall contain the following topics:

(i) A brief overview to the course.

(ii) An introduction of course objectives and general background on the health risks of lead and the purpose of lead sampling.

(B) Skills shall contain the following topics:

(i) How to perform a visual assessment.

(ii) Preparation for and collection of dust wipe samples.

(iii) Selection of an accredited lab, sample submission, and interpretation of acceptable results.

(C) Application shall contain the following topics:

(i) Overview of federal, state, and local regulations applying to lead sampling.

(ii) How to perform lead samples in post-renovation clearance, HUD-required clearance, and other lead sampling examinations.

(D) Writing and delivering reports shall include the following:

(i) The preparation of reports.

(ii) The procedures for explaining results to clients.

(7) The course of study for the Indiana lead-based paint rules awareness course must be a minimum of two (2) training hours. This course of study shall include the use of all Indiana guidelines, manuals, and appendices on the following course topics:

(A) Introduction and background shall contain the following topics:

(i) A brief overview to the course.

(ii) Introduction of course objectives.

(B) Indiana lead-based paint rules to include the following:

(i) Review and comparison of Indiana lead-based paint rules to federal rule requirements.

(ii) Student question and answer session on Indiana lead-based paint rules.

(C) Indiana lead-based paint forms to include the following:

(i) Licensing application form.

(ii) Project notification form.

(iii) Inspection and risk assessment reports.

~~*/**Copies of pertinent sections of the Toxic Substances Control Act (TSCA) and the United States Code (U.S.C.) are available~~ ***These documents are incorporated by reference. Copies may be obtained** from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204.

~~**Copies of pertinent sections of the Code of Federal Regulations (CFR) are available from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.~~ *(Air Pollution Control Board; 326 IAC 23-3-3; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1448)*

SECTION 54. 326 IAC 23-3-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-3-5 Examination requirements

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 5. (a) Each initial and refresher training course shall include a closed-book written examination at the conclusion of each course.

(b) Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course.

(c) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course of study contained in section 3 of this rule.

(d) The training manager is responsible for maintaining the validity and integrity of the written examination to ensure that it accurately evaluates the trainees' knowledge and retention of the course of study.

(e) Each examination shall adequately cover the course of study included in the training course for that discipline.

(f) The written examination shall be developed in accordance with the test blue print submitted with the training approval application.

(g) Written examinations shall have a passing score of at least seventy percent (70%) and shall consist of multiple-choice questions for each respective discipline. In addition, the training course provider shall include a hands-on skill assessment if applicable to the requirements for that discipline. The following **minimum** number of questions shall be required for each respective discipline:

(1) Inspector, fifty (50) questions.

(2) Risk assessor, one hundred (100) questions.

(3) Project designer, ~~one hundred (100)~~ **fifty (50)** questions.

(4) Supervisor, one hundred (100) questions.

(5) Worker, fifty (50) questions.

(6) Clearance examiner, fifty (50) questions.

(h) No more than twenty percent (20%) of the same questions may be retained between any two (2) exams.

(i) The Indiana lead-based paint rules awareness course does not require the administration of an examination for the completion of the course. *(Air Pollution Control Board; 326 IAC 23-3-5; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1451)*

SECTION 55. 326 IAC 23-3-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-3-7 Expiration of course approval; reapproval

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 7. (a) Unless reapproved, a training course approval, including refresher training approval, shall expire ~~one (1) year~~ **thirty-six (36) months** from the date of issuance. A training

course provider seeking reapproval of each training course shall submit one (1) written application per discipline for each initial and each refresher training course on forms ~~provided by~~ **available from** the department no later than ninety (90) days before its current approval expires. The department cannot guarantee that a determination on the application will be made before the end of the current approval period if a training course provider does not submit a timely, complete application for reapproval.

(b) The training course provider's application for reapproval shall contain the following information:

(1) ~~The training course provider's name, address, telephone number, and primary contact person.~~ **A completed and signed application form for lead-based paint training courses.**

~~(2) The name of the training course.~~

~~(3) The course agenda or curriculum.~~

~~(4) A letter from the training course provider that clearly indicates how the course meets the applicable requirements of this rule, including the following information:~~

~~(A) Length of training in days.~~

~~(B) A description of the facilities and equipment to be used for lecture and hands-on training.~~

~~(C) A description concerning any changes to the training facility, equipment, or course materials since the last application was approved that adversely affects students' ability to learn.~~

~~(D) Amount and type of hands-on training.~~

~~(E) Description of the examinations, including the length, format, and passing score.~~

~~(F) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.~~

~~(G) Topics covered in the course.~~

~~(H) A copy of the quality control plan.~~

~~(5) A detailed statement about the development of the examinations and a copy of the examinations used in the course.~~

~~(6)~~ **(2)** The names and qualifications of the course instructors, including guest instructors ~~to include~~ **and** academic credentials and field experience.

~~(7) A description and an example of numbered certificates issued to students who complete the course and pass the examination, with the following information:~~

~~(A) Name and address of the accredited person.~~

~~(B) Discipline of the training course completed.~~

~~(C) Dates of the training course.~~

~~(D) Date of the examination.~~

~~(E) An expiration date not to exceed one (1) year after the date upon which the person successfully completed the course and passed the examination.~~

~~(F) The name, address, and telephone number of the training course provider who issued the certificate.~~

~~(G) A statement that the person receiving the certificate has completed the requisite training for lead-based paint accreditation.~~

~~(H) A statement that the training course meets the requirements as outlined by Indiana under this rule.~~

~~(8) A list of both U.S. EPA approved and nonapproved states in which the course has received full or contingent approval. Also provide a list of courses directly approved by the U.S. EPA.~~

~~(9) A detailed statement of how the training course provider ensures that all requirements for training students be met in the event that:~~

~~(A) the instructor does not speak a language understood by all students; or~~

~~(B) the course materials are not in a language understood by all students.~~

~~(10) A list of courses for which the training course provider is applying for reapproval.~~

~~(11)~~ **(3)** A description of any changes to the training facility, equipment, ~~or~~ course materials, **or curriculum** since its last application was approved that adversely affects the students' ability to learn.

~~(12)~~ **(4)** A statement signed by the program manager stating that

~~(A)~~ the training course provider complies at all times with: **(A)** all **applicable** requirements in this rule; ~~as applicable;~~ and

(B) the record keeping and reporting requirements of this section. ~~shall be followed.~~

(c) Upon request, the training course provider shall allow the department to audit the training curriculum to verify the contents of the application for reapproval.

(d) A training course provider may apply for reapproval to offer initial courses or refresher courses in as many disciplines as it chooses **or the Indiana lead-based paint rule awareness course.** A training course provider may seek approval for additional courses at any time as long as the training course provider can demonstrate that it meets the requirements of this rule.

~~(e) If a training course provider's training course materials are based on U.S. EPA-recommended model training materials or training materials approved by Indiana, another approved state or Indian tribe, the training course manager shall include a statement certifying that the recommended version will be used.~~

~~(f) If a training course provider's training course materials are not based on U.S. EPA-recommended model training materials or training materials approved by an EPA-approved state or Indian tribe, the training course provider's application for approval shall include the following for each course:~~

~~(1) A copy of the student and instructor manuals.~~

~~(2) A copy of the course agenda.~~

(Air Pollution Control Board; 326 IAC 23-3-7; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1451)

SECTION 56. 326 IAC 23-3-11 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-3-11 Course notification and record submittal requirements

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 11. All approved providers of approved initial and refresher training courses **or the Indiana lead-based paint rule awareness course** shall comply with the following requirements:

(1) Notify the department in writing of all intended training courses to be held. Notification shall contain course dates, daily scheduled beginning and ending times, and exact course locations. Submission information shall be as follows:

(A) Notice of courses to be held in Indiana shall be submitted to the department two (2) weeks prior to the scheduled course start date.

(B) Notice of courses to be held outside Indiana shall be submitted to the department four (4) weeks prior to the scheduled course start date.

(C) Notice of course cancellation shall be submitted to the department two (2) working days prior to the scheduled course start date.

(2) All approved providers of accredited initial and refresher training courses **or the Indiana lead-based paint rule awareness course** shall provide the department, not later than two (2) weeks after the completion of each course, the following:

(A) A list of all course attendee names.

(B) The type of course attended.

(C) The date or dates of the course and the examination.

(D) Exam scores for each attendee.

(E) The certificate number issued to each attendee.

(Air Pollution Control Board; 326 IAC 23-3-11; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1454)

SECTION 57. 326 IAC 23-3-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-3-12 Application fee

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14; IC 36-1-2-10; IC 36-1-2-23

Sec. 12. (a) Upon application for **an** initial or refresher lead-based paint activities course approval **or an initial or refresher training course reapproval,** a training course provider shall pay a ~~one (1) time,~~ **nonrefundable** application fee of one thousand dollars ($1,000) for each of the following disciplines:

(1) Inspector.

(2) Risk assessor.

(3) Project designer.

(4) Supervisor.

(5) Worker.

(6) Clearance examiner.

(b) Upon application for ~~initial or refresher training course~~ **approval or** reapproval **of an Indiana lead-based paint rule awareness course,** a training course provider shall pay ~~an annual~~ **a nonrefundable** application fee of ~~five hundred dollars ($500) for each of the following disciplines:~~ **one thousand dollars ($1,000).**

~~(1) Inspector.~~

~~(2) Risk assessor.~~

~~(3) Project designer.~~

~~(4) Supervisor.~~

~~(5) Worker.~~

(c) Fees paid by mail shall be paid by check or money order and shall be made payable to the lead trust fund.

(d) The application fee is not:

(1) transferable from one (1) type of discipline to another;

(2) transferable from one (1) training course provider to another; **or**

(3) transferable to any other type of license or approval issued by the department; ~~or~~

~~(4) refundable;~~

unless requested by the applicant within three (3) days of submittal to the department or prior to the processing of the application by the department, whichever is earlier.

(e) The following are exempt from the payment of fees established under this section:

(1) A state.

(2) A municipal corporation, as defined in IC 36-1-2-10.

(3) A unit, as defined in IC 36-1-2-23.

(4) An organization exempt from income taxation under 26 U.S.C. 501(a)*.

Any request for an exemption must include proof as to the qualification of the exemption with the license application.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D. C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 23-3-12; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1454)*

SECTION 58. 326 IAC 23-3-13 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-3-13 Representation of training course approval

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 13. No person shall make representation as conducting an approved initial training course or approved refresher

training course **or the Indiana lead-based paint rule awareness course** for the purpose of licensing persons under 326 IAC 23-2 without prior written approval from the department under this rule. *(Air Pollution Control Board; 326 IAC 23-3-13; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1455)*

SECTION 59. 326 IAC 23-4-1 IS AMENDED TO READ AS FOLLOWS:

Rule 4. Work Practices for Abatement Activities

326 IAC 23-4-1 Applicability
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 1. (a) This rule contains procedures and requirements for work practice standards for conducting lead-based paint activities. Any licensed person or company performing the following activities shall comply with the appropriate work practices as outlined in this rule:

(1) Inspection.
(2) Lead-hazard screening.
(3) Risk assessment.
(4) Abatement.
(5) Project designer.

(b) A political subdivision or a state agency may not accept a bid for a lead-based activities project from a person that does not hold a lead-based paint activities license. *(Air Pollution Control Board; 326 IAC 23-4-1; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1455; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 60. 326 IAC 23-4-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-2 Inspections
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 2. An inspection for lead-based paint in a child-occupied facility or target housing shall be conducted only by a person licensed by the department as an inspector or risk assessor. The inspection shall include each component with a distinct painting history, except those components that the inspector or risk assessor determines through the examination of receipts for architectural proof to have been replaced after 1978 or do not contain lead-based paint. If conducted, an inspection shall be conducted as follows:

(1) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(A) In a residential dwelling and child-occupied facility, each interior component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint.

(B) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area **group.**

(2) Paint shall be sampled in either, or both, of the following ways:

(A) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(B) All collected paint chip samples shall be analyzed by a laboratory recognized by U.S. EPA pursuant to TSCA Sec. 405(b) as capable of performing analyses for lead compounds in paint chips, dust, and soil samples to determine if they contain detectable levels of lead that can be quantified numerically.

(3) The licensed inspector or risk assessor shall prepare an inspection report that shall include the following information:

(A) Date of each inspection.
(B) Address of building.
(C) Date of construction.
(D) Apartment number, when applicable.
(E) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.
(F) Name, signature, and license number of each licensed inspector or risk assessor conducting testing.
(G) Name, address, and telephone number of the firm employing each inspector or risk assessor, when applicable.
(H) Each testing method and device or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence device.
(I) Specific locations of each painted component tested for the presence of lead-based paint.
(J) The results of the inspection, expressed in terms appropriate to the sampling method used.

(4) All property owners, from the date of receipt of the lead-based paint inspection report, must disclose all information contained in the report to parties to a transfer of the inspected property as required by 876 IAC 1-4-2.

(Air Pollution Control Board; 326 IAC 23-4-2; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1455; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 61. 326 IAC 23-4-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-3 Lead hazard screen
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 3. A lead hazard screen shall be conducted only by a person licensed by the department as a risk assessor. A lead hazard screen shall be conducted as follows:

(1) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint

exposure to one (1) or more children six (6) years of age or younger shall be collected.

(2) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) determine if any deteriorated paint is present; and

(B) locate at least two (2) dust sampling locations.

(3) If deteriorated paint is present, ~~each surface with deteriorated paint which is~~ **the following surfaces which are** determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead:

(A) Each friction surface or impact surface with visibly deteriorated paint.

(B) All other surfaces with visibly deteriorated paint.

(4) In residential dwellings, two (2) composite dust samples shall be collected **and analyzed,** one (1) from the floors and one (1) from ~~a~~ **an interior** window ~~trough~~ **sill** in **all living areas, including, but not limited to,** rooms, hallways, or stairwells where ~~one (1) or more children,~~ **any child** six (6) years of age or younger ~~are most~~ **is** likely to come in contact with dust.

(5) In multi-family dwellings and child-occupied facilities, ~~in addition to~~ the ~~floor and window~~ samples required in subdivision ~~(4),~~ **(3) shall be taken in:**

(A) each room, hallway, or stairwell used by any child six (6) years of age and under; and

(B) other common area groups in the child-occupied facility where any child six (6) years of age and under is likely to come into contact with dust.

In addition, the risk assessor shall also collect **and analyze** at least two (2) composite **or single-surface** dust samples from ~~common areas~~ **interior window sills and floors** where ~~one (1) or more children,~~ **any child,** six (6) years of age or younger, ~~are most~~ **is** likely to come into contact with dust.

(6) Dust samples shall be collected and analyzed in the following manner:

(A) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures.

(B) All collected dust samples shall be analyzed to determine if they contain detectable levels of lead that can be quantified numerically.

(7) Paint shall be sampled in either, or both, of the following manners:

(A) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(B) All collected paint chip samples shall be analyzed to determine if they contain detectable levels of lead that can be quantified numerically.

(8) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(A) Date of assessment.

(B) Address of building.

(C) Date of construction.

(D) Apartment number, if applicable.

(E) Name, address, and telephone number of each owner or owners of each residential dwelling or child-occupied facility.

(F) Name, signature, and license number of each licensed risk assessor conducting the assessment.

(G) Name, address, and telephone number of the firm employing each licensed risk assessor.

(H) Name, address, and telephone number of each recognized laboratory conducting the analysis of the collected samples.

(I) Each testing method and device or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence device.

(J) Specific locations of each painted component tested for the presence of lead-based paint.

(K) The results of the assessment including but not limited to visual inspections in terms appropriate to the sampling method used.

(L) All results of laboratory analysis on collected paint, soil, and dust samples.

(M) Any background information collected.

(N) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards.

(O) A description of the location, type, and severity of lead-based paint hazards and other potential lead hazards.

(P) A description of interim controls and abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(Air Pollution Control Board; 326 IAC 23-4-3; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1456; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 62. 326 IAC 23-4-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-4 Risk assessment

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 4. A risk assessment shall be conducted only by a person licensed by the department as a risk assessor. A risk assessment shall be conducted as follows:

(1) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one (1) or more children six (6) years of age or younger shall be collected.

(2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(3) Each of the following surfaces determined using documented methodologies to have a distinct painting history shall be tested for the presence of lead:

(A) Deteriorated paint in poor condition.

(B) Paint with a potential health hazard.

(4) In residential dwellings, dust samples (either composite or single-surface samples) from ~~the~~ **a** window and floor shall be collected in all living areas where one (1) or more children, six (6) years of age or younger are ~~most~~ likely to come into contact with dust.

(5) For multi-family dwellings and child-occupied facilities, additional window and floor dust samples (either composite or single-surface samples) shall be collected in the following locations:

(A) Common ~~areas~~ **area groups** adjacent to the sampled residential dwelling or child-occupied facility.

(B) Other common ~~areas~~ **area groups** in the building where the risk assessor determines that one (1) or more children, six (6) years of age or younger, are likely to come into contact with dust.

(6) For child-occupied facilities, **interior** window **sill** and floor dust samples (either composite or single-surface samples) shall be collected **and analyzed for lead concentration** in:

(A) each room, hallway, or stairwell used by one (1) or more children, six (6) years of age or younger; and

(B) in other common ~~areas~~ **area groups** in the child-occupied facility where the risk assessor determines one (1) or more children, six (6) years of age and younger, are likely to come into contact with dust.

(7) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(A) Exterior play areas where bare soil is present.

(B) Dripline or foundation areas where bare soil is present.

(C) Any yard area where bare soil is present, including the nonplay areas.

(8) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(9) Any collected paint chip, dust, or soil samples shall be analyzed to determine if they contain detectable levels of lead that can be quantified numerically.

(10) The licensed risk assessor shall prepare a risk assessment report that shall include the following information:

(A) Date of assessment including visual inspections.

(B) Address of each building.

(C) Date of construction.

(D) Apartment number, if applicable.

(E) Name, address, and telephone number of each owner or owners of each residential dwelling or child-occupied facility.

(F) Name, signature, and license number of the licensed risk assessor conducting the assessment.

(G) Name, address, and telephone number of the firm employing each licensed risk assessor.

(H) Name, address, and telephone number of each recognized laboratory conducting analysis of the collected samples.

(I) Each testing method, device, or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence device.

(J) Specific locations of each painted component tested for the presence of lead-based paint.

(K) All results of laboratory analysis on collected paint, soil, and dust samples.

(L) Any background information collected.

(M) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards.

(N) A description of the location, type, and severity of lead-based paint hazards and other potential lead hazards.

(O) A description of interim controls and abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(P) Results of visual inspections.

(Air Pollution Control Board; 326 IAC 23-4-4; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1456; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 63. 326 IAC 23-4-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-5 Abatement procedures for all projects

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 5. An abatement shall be conducted only by a person licensed by the department to remove lead-based paint. An abatement shall be conducted as follows:

(1) A licensed supervisor is required for each abatement project and shall be on site and responsible for direct supervision of workers during all:

(A) work site preparation;

(B) abatement activities; and

(C) post-abatement cleanup of work areas.

Lead-based paint workers shall have access to the supervisor throughout the duration of the project.

(2) The licensed supervisor and the licensed contractor employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other federal, state, and local requirements.

(3) Notification of the commencement of lead-based paint

abatement activities in target housing or child-occupied facility or as a result of a federal, state, or local order shall be given to the department prior to the commencement of abatement activities as provided in section 6 of this rule.

(4) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(A) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(B) A licensed supervisor or project designer shall prepare the occupant protection plan.

(5) The work practices shall be restricted during an abatement as follows:

(A) Open-flame burning or torching of lead-based paint is prohibited.

(B) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with HEPA exhaust control that removes particles of three-tenths (0.3) micron or larger from the air at ninety-nine and ninety-seven hundredths percent (99.97%) or greater efficiency.

(C) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two (2) square feet in any one (1) room, hallway, or stairwell or totaling no more than twenty (20) square feet on exterior surfaces.

(D) Operating a heat gun on lead-based paint is permitted only at temperatures below one thousand one hundred (1,100) degrees Fahrenheit.

(6) If conducted, soil abatement shall be conducted ~~in one (1) of the following ways:~~ **as follows:**

(A) If soil is removed, the lead-contaminated soil shall be replaced with soil ~~that is not lead-contaminated.~~ **with a lead concentration as close to local background as practicable, but not greater than four hundred (400) parts per million. The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.**

(B) If soil is not removed, the lead-contaminated soil shall be permanently covered.

(7) When sealing the work area off from the nonwork area, six (6) mil sheeting shall be used and all tears, breaks, cracks, and openings in the containment system shall be repaired as they occur.

(8) All persons entering a work area during a lead-abatement project that involves breaking or disturbing lead-painted surfaces shall wear disposable shoe covers that shall be removed upon leaving the work area and placed with ~~abatement~~ **lead abated** waste. Any persons entering a work area during lead paint removal activity ~~such as~~ using a heat gun, scraping, HEPA sanding, or chemical stripping, or during replacement and during the cleanup process shall also wear appropriate respirator protection in accordance with all OSHA requirements found at 29 CFR 1926.62*. In every abatement activity that results in the disturbance of lead-based paint, polyethylene plastic sheeting shall always be placed directly below the work area.

(9) A supervisor shall post warning signs at all entrances and exits to work area. The warning signs posted shall read ~~"Caution Lead Hazard–Do Not Enter Work Area Unless Authorized".~~ **"Warning Lead Work Area Poison No Smoking or Eating".**

(10) Access of nonworkers to abatement work areas shall be limited. The abatement work crew supervisor is responsible for enforcing this limited access. Only the persons informed by the supervisor of potential lead hazards and who have a direct relationship to the project may enter the work area.

~~(11) Heat guns shall not be operated in excess of one thousand one hundred (1,100) degrees Fahrenheit.~~

~~(12)~~ **(11)** Any surfaces that have been stripped with caustic chemicals or that have come into contact with caustic or solvent-based liquid waste shall be cleaned by wet washing until there is no visible residue.

~~(13)~~ **(12)** Work areas shall be restricted by barrier tape.

~~(14)~~ **(13)** A thorough cleanup of the entire area under active abatement shall occur daily during the entire interior and exterior abatement process. This daily cleanup shall consist of the following:

~~(A) HEPA vacuum all surfaces and place debris into labeled six (6) mil polyethylene sheets.~~

~~(B) Lead-contaminated~~ **(A) Lead abated** waste shall be stored in an area inside the property line designated and posted as a lead waste storage area, and covered with six (6) mil polyethylene sheeting. ~~Lead-contaminated~~

(B) Lead abated waste shall be stored ~~outside.~~ **in locked containers, rooms, trucks, or trailers.**

(C) Small debris shall be swept up using a HEPA vacuum and bagged in a six (6) mil polyethylene or double four (4) mil bags and stored in a designated secure area.

(D) Consumable and disposable supplies, ~~such as~~ **including** mop heads, plastic sheeting, sponges, and rags shall be treated as ~~contaminated debris.~~ **lead abated waste.**

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying from Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 23-4-5; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1457; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 64. 326 IAC 23-4-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-6 Lead abatement notification procedures

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 6. (a) Each owner or operator of a lead abatement activity site to whom this rule applies shall do the following:

(1) Provide the department with written notice of intention to conduct an activity on a form to be provided by the department and update such notice as necessary, including, but not limited to, the following:

(A) The project start date.

(B) The activity contractor.

(C) An indication of whether the notice is the original, a revised copy, or a canceled copy.

(D) Name, address, and telephone number of both the facility owner and operator and the lead abatement contractor owner or operator.

(2) Postmark or hand deliver the notice as follows:

(A) At least two (2) working days before ~~an~~ **a lead-based paint** activity, including:

(i) abatement;

(ii) repair;

(iii) removal; **or**

(iv) **soil removal or** encapsulation;

~~(v) storage;~~

~~(vi) stripping;~~

~~(vii) dislodging;~~

~~(viii) cutting; or~~

~~(ix) drilling;~~

that results in the disturbance of lead-based paint.

(B) If the activity is an emergency abatement operation, notice shall be given as early as possible but not later than the following working day after the activity is started.

(C) Delivery of the notice by the United States postal service, facsimile, commercial delivery service, or hand delivery is acceptable. If the notice is being updated, a copy of the previous notification being updated shall be attached to the new, revised notification.

(D) Include any of the following types of operations in the notification:

(i) Wet or dry stripping.

(ii) Encapsulation.

(iii) Enclosure.

(iv) Emergency abatement.

(v) Soil removal.

(vi) Interior abatement.

(vii) Exterior abatement.

(E) Description of the facility or affected part of the facility, including the following:

(i) Size in square feet.

(ii) Number of floors.

(iii) Age.

(iv) Present and prior use of the facility.

(F) Procedure, including analytical methods, employed to detect the presence and amount of lead-based paint.

(G) An estimate the approximate amount of lead-based paint to be removed in the facility in terms of linear feet or square feet on facility components.

(H) Location and street address, including:

(i) building number, building name, and floor or room number location, if available;

(ii) city;

(iii) county; and

(iv) state;

where the activity is to take place.

(I) Scheduled starting abatement removal date and completion dates as indicated by the posting and removal of lead-based paint hazard demarcations in the work area.

(J) Description of planned activity work to be performed and methods to be employed, including techniques to be used and a description of the affected facility components.

(K) Description of work practices and engineering controls to be used to comply with this rule, including lead removal. ~~and waste handling emission control procedures.~~

(L) Description of procedures to be followed in the event that unexpected lead-based paint becomes a lead-based paint hazard and warrants immediate action.

~~(M) Name and location of the waste disposal site where lead containing waste material will be deposited.~~

~~(N)~~ **(M)** A signed certification from the owner or operator **of the facility** that the information provided in this notification is correct and that only Indiana licensed workers and project supervisors will be used to implement lead abatement activity.

~~(O)~~ **(N)** For lead-based paint activities, the name, address, telephone number, and license number issued to the following, **if applicable:**

(i) The person who inspected the facility for lead-based paint.

(ii) The person who will conduct risk assessment lead abatement activities.

(iii) The contractor who will conduct lead abatement activities.

~~(P)~~ **(O)** For emergency lead abatement activities, the date and hour that the emergency occurred, including a description and an explanation of how the event causes a lead-based paint hazard and warrants immediate action.

~~(Q)~~ **(P)** Name, address, and telephone number of the waste transporter.

(3) When the lead abatement activity will begin:

(A) on a date after the date specified in the original or the most recent revised notification, provide written notice of the new stripping or removal start date to the department postmarked at least two (2) working days or delivered at least one (1) working day before the start date of the lead abatement activity specified in the notification that is being updated; or

(B) on a date earlier than the date specified in the original or the most recent revised notification, provide written

notice of the new activity start date to the department postmarked or delivered at least two (2) working days before the start date of the lead abatement activity begins.

(b) In no event shall lead abatement activities begin on a date other than the date contained in the most recent written notification. *(Air Pollution Control Board; 326 IAC 23-4-6; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1458; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 65. 326 IAC 23-4-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-7 Lead abatement procedures; interior

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 7. Interior abatement shall include the following procedures:

(1) Post warning signs at entrances and exits to work area and the sign shall read ~~"Caution Lead Hazard–Do Not Enter Work Area Unless Authorized."~~. **"Warning Lead Work Area Poison No Smoking or Eating".**

(2) The department strongly recommends that wall-to-wall carpeting be removed. However, if left in place, it shall be covered with at least two (2) sheets of six (6) mil polyethylene sheeting, secured to the wall or baseboard with masking tape to ensure no contamination by lead dust or other lead-contaminated materials.

(3) ~~Nonmovable~~ Objects remaining in the work area shall be wrapped **or covered** with six (6) mil polyethylene sheeting and sealed with tape.

(4) After all moveable objects have been removed from the work area, the area shall be sealed from nonwork areas.

(5) After sealing off the work area, floors shall be covered with at least two (2) layers of six (6) mil polyethylene sheeting.

(6) Forced-air heating and air conditioning systems shall be shut down, and all air intake and exhaust points of these systems shall be sealed.

(7) If a common area **group** is an abatement work area, and there are no alternative entrances and egresses that are located outside of the work area, a protected passage through the common area **group** shall be erected.

(8) If a safe passage cannot be created and alternative entrances and exits do not exist, then abatement in common ~~areas~~ **area groups** shall be conducted between established and posted hours and the work area shall be cleaned with a HEPA vacuum at the end of each working day until all surfaces are free of all visible dust and debris.

(Air Pollution Control Board; 326 IAC 23-4-7; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1460; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 66. 326 IAC 23-4-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-9 Post-abatement clearance procedures

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 9. The following post-abatement final visual clearance procedures shall be performed only by a licensed inspector or risk assessor:

(1) Following an abatement and prior to removal of warning signs or other demarcation, a visual inspection shall be completed by an Indiana licensed inspector or risk assessor to determine if deteriorated, painted surfaces or visible amounts of dust, debris, or residue are still present.

(2) If deteriorated painted surfaces or visible amounts of dust debris or residue are present, they must be wet wiped or HEPA vacuumed until such conditions are eliminated prior to the continuation of the clearance procedures.

(3) Following the visual inspection and any post-abatement cleanup required in this rule, clearance sampling for lead-contaminated dust shall be conducted by employing single-surface sampling or composite sampling techniques.

(4) Dust samples on surfaces for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures.

(5) Dust samples for clearance purposes shall be taken within a minimum of one (1) hour after completion of final post-abatement clean-up activities.

(6) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the target housing or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas:

(i) one (1) dust sample shall be taken from one (1) **interior** window **sill and from one (1) window trough,** if ~~available;~~ **present;**

(ii) one (1) dust sample shall be taken from the ~~floor~~ **floors of each** of no less than four (4) rooms, hallways, or stairwells within the containment area; and

(iii) one (1) dust sample shall be taken from the floor outside the containment area.

If there are fewer than four (4) rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled.

(B) After conducting an abatement with no containment:

(i) two (2) dust samples shall be taken from **each of** no fewer than four (4) rooms, hallways, or stairwells in the target housing or child-occupied facility;

(ii) one (1) dust sample shall be taken from one (1) **interior** window **sill and one (1) window trough,** if ~~available;~~ **present;** and

(iii) one (1) dust sample shall be taken from the floor of each room, hallway or stairwell selected.

If there are fewer than four (4) rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled.

(C) Following an exterior paint abatement, a visible inspection shall be conducted as follows:

(i) All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be clean of visible dust and debris.

(ii) A visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated.

(iii) If paint chips are present,

~~(AA)~~ the chips shall be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements. ~~and~~

~~(BB) soil sampling shall be performed by documented methodologies to determine if the lead hazard has been removed.~~

(D) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies.

(E) The ~~certified~~ **licensed** inspector or risk assessor shall compare the residual lead level, as determined by the laboratory analysis, from each **single surface** dust sample with applicable clearance levels for lead in dust on floors, **interior window sills,** and ~~windows.~~ **window troughs divided by half the number of subsamples in the composite sample.** If the residual lead ~~levels.~~ **level:**

(i) in a **single surface** dust sample ~~exceed~~ **equals or exceeds** the **applicable** clearance levels; **or**

(ii) in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample;

all the components represented by the failed sample shall be recleaned and retested until clearance levels are met.

(F) The clearance levels for lead in dust are as follows:

(i) Forty (40) micrograms per square foot for floors.

(ii) Two hundred fifty (250) micrograms per square foot for interior window sills.

(iii) Forty (40) micrograms per square foot for window troughs.

(Air Pollution Control Board; 326 IAC 23-4-9; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1460; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 67. 326 IAC 23-4-11 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-11 Lead-based paint abatement disposal procedures

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 11. The following procedures shall be followed when disposing of lead-based paint waste:

(1) All lead-based paint waste left at a facility or stored elsewhere prior to disposal, shall be securely stored in a manner that restricts access by unauthorized persons to the material.

(2) The material shall be stored in locked containers, rooms, trucks, or trailers.

(3) Lead hazard warning signs or labels shall be prominently displayed on the door of the locked containers, rooms, trucks, or other security measures shall be employed, including the use of barriers, barrier tape, or other measures approved by the department.

(4) Lead warning labels shall be posted in all areas where lead is stored.

(5) All waste shall be transported in accordance with United States department of transportation requirements and disposed of in accordance with ~~329 IAC 2-21, 329 IAC 3.1-6-1,~~ **329 IAC 3.1-6** and ~~329 IAC 10-8.1.~~ **329 IAC 3.1-10.**

(Air Pollution Control Board; 326 IAC 23-4-11; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1461; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 68. 326 IAC 23-4-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-12 Analysis of samples

Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 12. (a) Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(1) collected by persons licensed by the department as an inspector or risk assessor; and

(2) analyzed by a laboratory recognized by the U.S. EPA pursuant to the TSCA, Section 405(b) U.S.C. 2685(b)* as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(b) The following conditions shall apply when composite dust sampling is conducted:

(1) Composite dust samples shall consist of at least two (2) subsamples.

(2) Every component that is being tested shall be included in the sampling.

(3) Composite dust samples shall not consist of subsamples from more than one (1) type of component.

*__This document is incorporated by reference.__ Copies ~~of the Toxic Substances Control Act (TSCA)~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402. Copies of pertinent sections~~ are ~~also~~ **20401 or** available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 23-4-12; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1462; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 69. 326 IAC 23-4-13 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-4-13 Record keeping
Authority: IC 13-17-14-5
Affected: IC 13-11; IC 13-17-14

Sec. 13. (a) All reports or plans required in this rule shall be completed no later than sixty (60) **calendar** days from the completion of the abatement project.

(b) All reports and plans shall be maintained for no fewer than three (3) years by the licensed person or contractor who prepared the report.

(c) The licensed person or contractor shall provide copies of these reports to the building owner who contracted for services no later than sixty (60) **calendar** days from the completion of the abatement project.

(d) The licensed person or contractor shall make reports available to the department upon request.

(e) A lead-based paint activities contractor licensed under this rule shall compile records concerning each lead-based paint activities project performed by the lead-based paint activities contractor. The records shall include the following information on each lead-based paint activities project:

(1) The name, address, and proof of license of:
(A) the person who supervised the lead-based paint activities project for the lead-based paint activities contractor; and
(B) each employee or agent of the lead-based paint activities contractor that worked on the project.

(2) The name, address, and signature of each ~~certified~~ **licensed** risk assessor or inspector conducting clearance sampling and the date of clearance testing.

(3) The site of the lead-based paint activities project.

(4) A description of the lead-based paint activities project.

(5) The date on which the lead-based paint activities project was started and the date on which the lead-based paint activities project was completed.

(6) A summary of procedures that were used in the project to comply with applicable federal, state, and local standards for lead-based paint activities projects.

(7) A detailed written description of the lead-based paint activities, including methods used, locations of rooms or components where lead-based paint activities occurred, reasons for selecting particular lead-based paint activities methods for each component, and any suggested monitoring of encapsulants or enclosures.

(8) The occupant protection plan.

(9) The results of clearance testing and all soil analysis and the name of each federally-approved laboratory that conducted the analysis.

~~(10) The amount of material containing lead-based paint that was removed from the site of the project.~~

~~(11) The name and address of each disposal site used for the disposal of lead-based paint containing material that was disposed of as a result of the lead-based paint activities project.~~

(f) A copy of each receipt issued by a disposal site must be included in the records. *(Air Pollution Control Board; 326 IAC 23-4-13; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1462; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 70. 326 IAC 23-5 IS ADDED TO READ AS FOLLOWS:

Rule 5. Work Practices for Nonabatement Activities

326 IAC 23-5-1 Applicability
Authority: IC 13-17-14-5; IC 13-17-14-12
Affected: IC 13-11-2-61.5; IC 13-17-14

Sec. 1. (a) This rule applies to:
(1) remodeling, renovation, and maintenance activities at target housing and child occupied facilities built before 1960; and
(2) lead-based paint activities.

(b) For purposes of this rule, paint is considered to be lead-based paint unless the absence of lead in the paint has been determined by a lead-based paint inspection conducted under this article.

(c) This rule does not apply to an individual who performs remodeling, renovation, or maintenance activities within a residential dwelling that the individual owns unless the residential dwelling is occupied:
(1) while the activities are being performed, by an individual other than the owner or a member of the owner's immediate family; or
(2) by a child who:
(A) is six (6) years of age or younger;
(B) resides in the building; and
(C) has been identified as having an elevated blood lead level as defined at IC 13-11-2-61.5.
(Air Pollution Control Board; 326 IAC 23-5-1)

326 IAC 23-5-2 Remodeling, renovation, and maintenance activities
Authority: IC 13-17-14-5; IC 13-17-14-12
Affected: IC 13-11; IC 13-17-14

Sec. 2. (a) A person who performs an activity under section 1 of this rule that disturbs:
(1) exterior painted surfaces of more than twenty (20) square feet;
(2) interior painted surfaces of more than two (2) square feet in any one (1) room or space; or
(3) more than ten percent (10%) of the combined interior and exterior painted surface area of components of the building;
shall meet the requirements of subsections (b) through (d).

(b) A person may not use any of the following methods to remove lead-based paint:

(1) Open flame burning or torching.
(2) Machine sanding or grinding without high efficiency particulate air local exhaust control.
(3) Abrasive blasting or sandblasting without high efficiency particulate air local exhaust control.
(4) A heat gun that:
(A) operates above one thousand one hundred (1,100) degrees Fahrenheit; or
(B) chars the paint.
(5) Dry scraping, except:
(A) in conjunction with a heat gun; or
(B) within one (1) foot of an electrical outlet.
(6) Dry sanding, except within one (1) foot of an electrical outlet.

(c) In a space that is not ventilated by the circulation of outside air, a person may not strip lead-based paint using a volatile stripper that is a hazardous chemical under 29 CFR 1910.1200*, as in effect July 1, 2002.

(d) A person conducting remodeling, renovation, or maintenance activities under this rule on painted exterior surfaces may not allow visible paint chips or painted debris that contains lead-based paint to remain on the soil, pavement, or other exterior horizontal surface for more than forty-eight (48) hours after the surface activities are complete.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 23-5-2)*

SECTION 71. THE FOLLOWING ARE REPEALED: 326 IAC 23-1-22; 326 IAC 23-1-23; 326 IAC 23-1-37; 326 IAC 23-1-40; 326 IAC 23-1-42; 326 IAC 23-1-43; 326 IAC 23-1-44; 326 IAC 23-1-45; 326 IAC 23-1-46; 326 IAC 23-1-47.

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on June 4, 2003 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed new and amended provisions in to 326 IAC 23.

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

Additional information regarding this action may be obtained from Suzanne Whitmer, Rule Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

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

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

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

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

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 515 PROFESSIONAL STANDARDS BOARD

Proposed Rule
LSA Document #03-10

DIGEST

Adds 515 IAC 8 to provide for certain requirements for the issuance of initial practitioner and other licenses issued by the professional standards board. Effective 30 days after filing with the secretary of state.

515 IAC 8

SECTION 1. 515 IAC 8 IS ADDED TO READ AS FOLLOWS:

ARTICLE 8. INITIAL PRACTITIONER AND OTHER LICENSES

Rule 1. General Provisions

515 IAC 8-1-1 Definitions
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1-3

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

(b) "Accomplished practitioner license", as used in this

rule, is equivalent to the professional license as defined by 515 IAC 1-2-3 and 515 IAC 1-3-2.

(c) "All schools" means that the license applicant has met all developmental standards and qualifies for all five (5) school settings as set forth in section 2 of this rule.

(d) "Building level administrator" means principal, assistant principal, or any other position within a school setting that has the role or responsibility for direct supervision or primary evaluation of other licensed personnel.

(e) "Initial practitioner license", as used in this rule, is equivalent to the initial standard license under IC 20-6.1-3.

(f) "Instructional" license means a teaching license.

(g) "Licensing advisor" means a representative of a teacher, administration, or school services personnel training institution within Indiana who acts as a teacher advisor for, and at the request of, the applicant.

(h) "National Board for Professional Teaching Standards" means that the person has met all the qualifications for a National Board for Professional Teaching Standards certification in the content area listed on the license. The National Board for Professional Teaching Standards is located at 1525 Wilson Boulevard, Suite 500, Arlington, Virginia 22209.

(i) "Proficient practitioner license", as used in this rule, is equivalent to a renewed standard license under 515 IAC 1-2-3.

(j) "School setting" means the school building where the professional educator practices.

(k) "Teacher training institution" means a college or university offering a program of teacher education approved by the professional standards board. *(Professional Standards Board; 515 IAC 8-1-1)*

515 IAC 8-1-2 License types
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 2. (a) The following license types may be issued:
(1) Instructional.
(2) Administration.
(3) School services.

(b) To qualify for one (1) of the license types, the applicant must have at least one (1) school setting listed on the license as set forth in sections 4 through 8 of this rule. The school settings are as follows:
(1) Early childhood.
(2) Elementary; primary.
(3) Elementary; intermediate.
(4) Middle school/junior high.
(5) High school.
(6) All schools.

(c) To qualify for an instructional license, the applicant must have at least one (1) content area listed on the license as set forth in sections 8 through 39 of this rule.

(d) To qualify for an administration license, one must have at least one (1) administration content area listed on the license as set forth in sections 40 through 44 of this rule.

(e) To qualify for a school services license, one must have at least one (1) school services content area listed on the license as set forth in sections 45 through 48 of this rule.

(f) To qualify for an instructional or administration license, the applicant must meet all testing qualifications of 515 IAC 1-4. *(Professional Standards Board; 515 IAC 8-1-2)*

515 IAC 8-1-3 Preschool setting
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 3. (a) An applicant for the initial practitioner license in the preschool setting must meet the following requirements:
(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.
(2) Successfully meet the generalist standards for early childhood, adopted by the board, as set forth in 515 IAC 11, which will appear on the license as preschool generalist or specific content standards that will appear on the license as a specific content.
(3) Successfully meet the developmental standards for teachers of early childhood adopted by the board, as set forth in 515 IAC 11.
(4) Successfully complete all field experiences as set forth by the institution offering the teacher education program in both the content and developmental level.
(5) Be recommended for licensing by the licensing advisor of the institution of higher education granting the degree.

(b) A teacher licensed in preschool is only eligible to teach in the content area or areas listed on the license in prekindergarten classes providing he or she has also met the requirements of the early childhood generalist or the requirements of at least one (1) content area. *(Professional Standards Board; 515 IAC 8-1-3)*

515 IAC 8-1-4 Elementary/primary school setting
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 4. (a) An applicant for the initial practitioner license

in the elementary/primary school setting must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the generalist standards for early childhood, adopted by the board, as set forth in 515 IAC 11, which will appear on the license as elementary/primary generalist or specific content standards which will appear on the license as a specific content.

(3) Successfully meet the developmental standards for teachers of early childhood, adopted by the board, as set forth in 515 IAC 11.

(4) Successfully complete all field experiences as set forth by the institution offering the teacher education program in both the content and developmental level.

(5) Be recommended for licensing by the licensing advisor of the institution of higher education granting the degree.

(b) A teacher licensed for the elementary/primary school setting is only eligible to teach in elementary/primary classes providing he or she has also met the requirements of the elementary/primary generalist or the requirements of at least one (1) content area. *(Professional Standards Board; 515 IAC 8-1-4)*

515 IAC 8-1-5 Elementary/intermediate school setting
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 5. (a) An applicant for the initial practitioner license in the elementary/intermediate school setting must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the generalist standards for early childhood and the generalist standards for middle childhood, adopted by the board, as set forth in 515 IAC 11, which will appear on the license as elementary/intermediate generalist or specific content standards that will appear on the license as a specific content.

(3) Successfully meet the developmental standards for the standards for middle childhood, adopted by the board, as set forth in 515 IAC 11.

(4) Successfully complete all field experiences as set forth by the institution offering the teacher education program in both the content and developmental level.

(5) Be recommended for licensing by the licensing advisor of the institution of higher education granting the degree.

(b) A teacher licensed for the elementary/intermediate school setting is only eligible to teach in elementary/intermediate classes providing he or she has also met the requirements of the elementary/intermediate generalist or the requirements of at least one (1) content area. *(Professional Standards Board; 515 IAC 8-1-5)*

515 IAC 8-1-6 Middle school/junior high school setting
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 6. (a) An applicant for the initial practitioner license in the middle school/junior high school setting must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the content standards for at least one (1) area and the developmental standards for teachers of early adolescence, adopted by the board, as set forth in 515 IAC 11.

(3) Successfully complete all field experiences as set forth by the institution offering the teacher education program in both the content and developmental level.

(4) Be recommended for licensing by the licensing advisor of the institution of higher education granting the degree.

(b) A teacher licensed in middle school/junior high school setting is only eligible to teach the specific content subject or subjects listed on the license in middle school/junior high school classes. *(Professional Standards Board; 515 IAC 8-1-6)*

515 IAC 8-1-7 High school setting
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 7. (a) An applicant for the initial practitioner license in the high school setting must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet at least one (1) content area standard and the standards for adolescence/young adulthood adopted by the board as set forth in 515 IAC 11.

(3) Successfully complete field experience as set forth by the institution offering the teacher education program in both the content and developmental level.

(4) Be recommended for licensing by the licensing advisor of the institution of higher education granting the degree.

(b) A teacher licensed in high school setting is only eligible to teach in high school classes in the specific content areas listed on the license. *(Professional Standards Board; 515 IAC 8-1-7)*

515 IAC 8-1-8 Adaptive physical education
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 8. (a) The applicant for the initial practitioner license in adaptive physical education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the national standards as set forth in 515 IAC 11. The content area "Adaptive Physical Education" will appear on the license.

(b) The holder of a license with an adaptive physical education is eligible to teach adaptive physical education in the school setting listed on the license as set forth in section 2(b) of this rule.

(c) The holder of a license with adaptive physical education is only eligible to teach adaptive physical education or water safety instruction. A person who holds a valid water safety education license through the American Red Cross or any nationally recognized water safety organization may also teach water safety education without the adaptive physical education content area. *(Professional Standards Board; 515 IAC 8-1-8)*

515 IAC 8-1-9 Business

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 9. (a) The applicant for the initial practitioner license in business must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of business adopted by the board as set forth in 515 IAC 11. The content area "Business" will appear on the license.

(b) The holder of a license with business is only eligible to teach business in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-9)*

515 IAC 8-1-10 Career and technical education; agriculture

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 10. (a) The applicant for the initial practitioner license in career and technical education; agriculture must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of career and technical education adopted by the board, as set forth in 515 IAC 11, and occupational experience as set forth in subdivision (3). The content area "Career and Technical Education; Agriculture" will appear on the license.

(3) Verify four thousand (4,000) clock hours of successful employment in agriculture or one thousand five hundred (1,500) clock hours of supervised work under an approved teacher education program, or a combination equivalent thereto.

(b) The holder of a license with career and technical education; agriculture is only eligible to teach agriculture in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-10)*

515 IAC 8-1-11 Career and technical education; business services and technology

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 11. (a) The applicant for the initial practitioner license in career and technical education; business services and technology must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of career and technical education adopted by the board, as set forth in 515 IAC 11, and occupational experience as set forth in subdivision (3). The content area "Career and Technical Education; Business Services and Technology" will appear on the license.

(3) Verify four thousand (4,000) clock hours of successful employment in business services and technology or one thousand five hundred (1,500) clock hours of supervised work in business services and technology under an approved teacher education program, or a combination equivalent thereto.

(b) The holder of a license with career and technical education; business services and technology is only eligible to teach career and technical education; business services and technology in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-11)*

515 IAC 8-1-12 Career and technical education; marketing

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 12. (a) The applicant for the initial practitioner license in career and technical education; marketing must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an

institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of career and technical education adopted by the board, as set forth in 515 IAC 11, and occupational experience as set forth in subdivision (c). The content area "Career and Technical Education; Marketing" will appear on the license.

(3) Verify four thousand (4,000) clock hours of successful employment in marketing or one thousand five hundred (1,500) clock hours of supervised work in marketing under an approved teacher education program, or a combination equivalent thereto.

(b) The holder of a license with career and technical education; marketing is only eligible to teach marketing in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-12)*

515 IAC 8-1-13 Career and technical education; family and consumer sciences

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 13. (a) The applicant for the initial practitioner license in career and technical education; family and consumer sciences must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of career and technical education adopted by the board, as set forth in 515 IAC 11, and occupational experience as set forth in subdivision (3). The content area "Career and Technical Education; Family and Consumer Sciences" will appear on the license.

(3) Verify four thousand (4,000) clock hours of successful employment in family and consumer sciences or one thousand five hundred (1,500) clock hours of supervised work in family and consumer sciences under an approved teacher education program, or a combination equivalent thereto.

(b) The holder of a license with career and technical education; family and consumer sciences is only eligible to teach family and consumer sciences in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-13)*

515 IAC 8-1-14 Career and technical education; health occupations

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 14. (a) The applicant for the initial practitioner license in career and technical education; health occupations must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of career and technical education adopted by the board, as set forth in 515 IAC 11, and occupational experience as set forth in subdivision (3). The content area "Career and Technical Education; Health Occupations" will appear on the license.

(3) Verify four thousand (4,000) clock hours of successful employment in health occupations or one thousand five hundred (1,500) clock hours of supervised work in health occupations under an approved teacher education program, or a combination equivalent thereto.

(b) The holder of a license with career and technical education; health occupations is only eligible to teach health occupations in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-14)*

515 IAC 8-1-15 Career and technical education; trade and industrial education

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 15. (a) The applicant for the initial practitioner license in career and technical education; trade and industrial education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of career and technical education adopted by the board, as set forth in 515 IAC 11, and occupational experience as set forth in subdivision (3). The holder of the career and technical education license will be required to hold a specific trade and industrial content on the license, which will appear as "Career and Technical Education; Trade and Industrial Education [specific content area]".

(3) Verify four thousand (4,000) clock hours of successful employment in the specific trade and industrial content area or one thousand five hundred (1,500) clock hours of supervised work in specific trade and industrial content area under an approved teacher education program, or a combination equivalent thereto.

(b) The holder of a license with career and technical education; trade and industrial education is only eligible to teach in the specific trade and industrial education content area in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-15)*

515 IAC 8-1-16 Communication disorders
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 16. (a) The applicant for the initial practitioner license in communication disorders must meet the following requirements:

(1) Receive a master's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the national standards as set forth in 515 IAC 11. The content area "Communication Disorders" will appear on the license.

(b) The holder of a license with communication disorders is only eligible to teach in the school setting listed on the license as set forth in section 2(b) of this rule.

(c) The holder of a communication disorders license may obtain an accomplished practitioner license when he or she has completed an educational specialist degree or higher from an institution of higher education that is regionally accredited to offer graduate degrees. *(Professional Standards Board; 515 IAC 8-1-16)*

515 IAC 8-1-17 Computer education
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 17. (a) The applicant for the initial practitioner license in computer education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the national standards as set forth in 515 IAC 11. The content area "Computer Education" will appear on the license.

(b) The holder of a license with computer education is only eligible to teach computer education in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-17)*

515 IAC 8-1-18 Driver and traffic safety education
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 18. (a) The applicant for the initial practitioner license in driver and traffic safety education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the content standards adopted by the board as set forth in 515 IAC 11. The content area "Driver and Traffic Safety Education" will appear on the license.

(b) The holder of a license with driver and traffic safety education is only eligible to teach driver and traffic safety education in the high school setting as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-18)*

515 IAC 8-1-19 English as a new language
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 19. (a) The applicant for the initial practitioner license in English as a new language must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the English as a new language content standards adopted by the board as set forth in 515 IAC 11. The content area "English as a New Language" will appear on the license.

(b) The holder of a license with English as a new language is only eligible to teach English as a new language in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-19)*

515 IAC 8-1-20 English as a new language; bilingual/bicultural education
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 20. (a) The applicant for the initial practitioner license in English as a new language; bilingual/bicultural education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Hold a content area in English as a new language as set forth in section 19 of this rule.

(3) Successfully meet the English as a new language content standards section containing bilingual/bicultural education adopted by the board as set forth in 515 IAC 11. The content area "English as a New Language; Bilingual/Bicultural Education" will appear on the license.

(b) The holder of a license with English as a new language; bilingual/bicultural education is only eligible to teach bilingual/bicultural in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-20)*

515 IAC 8-1-21 Exceptional needs
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 21. (a) The applicant for the initial practitioner license in exceptional needs must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of exceptional needs adopted by the board, as set forth in 515 IAC 11, with a concentration in mild intervention and may include one (1) or more of the content areas, intense intervention, visually impaired, and hearing impaired. The following content areas may appear on an exceptional needs license:

(A) "Exceptional Needs; Mild Intervention".
(B) "Exceptional Needs; Intense Intervention".
(C) "Exceptional Needs; Visually Impaired".
(D) "Exceptional Needs; Hearing Impaired".

(b) The holder of a license with exceptional needs is only eligible to teach the specific exceptional needs content area in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-21)*

515 IAC 8-1-22 Fine arts
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 22. (a) The applicant for the initial practitioner license in fine arts must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of fine arts adopted by the board, as set forth in 515 IAC 11, with a concentration in one (1) of more of the content areas, visual arts, vocal and general music, instrumental and general music, theater arts, and dance. One (1) of the following content areas must appear on a fine arts license:

(A) "Fine Arts; Visual Arts".
(B) "Fine Arts; Vocal and General Music".
(C) "Fine Arts; Instrumental and General Music".
(D) "Fine Arts; Theater Arts".
(E) "Fine Arts; Dance".

(b) The holder of a license with fine arts is only eligible to teach in the specific fine arts content area in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-22)*

515 IAC 8-1-23 Foreign language
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 23. (a) The applicant for the initial practitioner license in foreign language must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of foreign language adopted by the board as set forth in 515 IAC 11. The content area "Foreign Language; [specific language]" will appear on the license.

(b) The holder of a license with foreign language is only eligible to teach in the specific language in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-23)*

515 IAC 8-1-24 Preschool generalist education license
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 24. (a) The applicant for the initial practitioner license in preschool generalist education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the generalist standards for early childhood adopted by the board, as set forth in 515 IAC 11, for the preschool generalist. The content area "Preschool Generalist" will appear on the license.

(3) Successfully complete field experience as defined by the institution offering the teacher education program in both the content and developmental level.

(4) Be recommended for licensing by the licensing advisor of the institution of higher education granting the degree.

(b) A preschool generalist teacher is only eligible to teach all subjects in prekindergarten classes, except exceptional needs. *(Professional Standards Board; 515 IAC 8-1-24)*

515 IAC 8-1-25 Elementary/primary education license
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 25. (a) The applicant for the initial practitioner license in elementary/primary education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the generalist standards for early childhood for the elementary/primary generalist adopted by the board as set forth in 515 IAC 11. The content area "Elementary/Primary Generalist" will appear on the license.

(3) Successfully complete field experience as defined by the institution offering the teacher education program in both the content and developmental level.

(4) Be recommended for licensing by the licensing advisor of the institution of higher education granting the degree.

(b) An elementary/primary generalist teacher is only eligible to teach all subjects in elementary/primary classroom, except exceptional needs. *(Professional Standards Board; 515 IAC 8-1-25)*

515 IAC 8-1-26 Elementary/intermediate education license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 26. (a) The applicant for the initial practitioner license in elementary/intermediate education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the generalist standards for early childhood and middle childhood for the elementary/intermediate generalist adopted by the board as set forth in 515 IAC 11. The content area "Elementary/Intermediate Generalist" will appear on the license.

(3) Successfully complete field experience as defined by the institution offering the teacher education program in both the content and developmental level.

(4) Be recommended for licensing by the licensing advisor of the institution of higher education granting the degree.

(b) An elementary/intermediate generalist teacher is only eligible to teach all subjects in an elementary/intermediate classroom, except exceptional needs. *(Professional Standards Board; 515 IAC 8-1-26)*

515 IAC 8-1-27 Generalist; early adolescence education license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 27. (a) The applicant for the initial practitioner license in generalist; early adolescence education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the generalist standards for generalist; early adolescence adopted by the board, as set forth in 515 IAC 11, with a concentration in two (2) content core subjects from four (4) core subjects, language arts, science, social studies, and mathematics. The candidate must meet the requirements for at least two (2) of the following four (4) core content subjects on the license:

(A) "Generalist; Early Adolescence [Language Arts]".

(B) "Generalist; Early Adolescence [Mathematics]".

(C) "Generalist; Early Adolescence [Science]".

(D) "Generalist; Early Adolescence [Social Studies]".

(3) Successfully complete field experience as defined by the institution offering the teacher education program in both the content and developmental level.

(4) Be recommended for licensing by the licensing advisor of the institution of higher education granting the degree.

(b) A generalist; early adolescence teacher is only eligible to teach the core subjects listed on the generalist; early adolescence license at the middle school/junior high school setting. *(Professional Standards Board; 515 IAC 8-1-27)*

515 IAC 8-1-28 Gifted and talented education

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 28. (a) The applicant for the initial practitioner license in gifted and talented education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the national standards as set forth in 515 IAC 11. The content area "Gifted and Talented Education" will appear on the license.

(b) The holder of a license with gifted and talented education is only eligible to teach gifted and talented education in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-28)*

515 IAC 8-1-29 Health/physical education

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 29. (a) The applicant for the initial practitioner license in health or physical education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of health/physical education adopted by the board, as set forth in 515 IAC 11, with concentration in either health

or physical education. One (1) or both of the following content areas will appear on the license:

(A) "Health".

(B) "Physical Education".

(b) The holder of a license with a health or physical education content area is only eligible to teach in the specific content area in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-29)*

515 IAC 8-1-30 Journalism

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 30. (a) The applicant for the initial practitioner license in journalism must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of journalism adopted by the board as set forth in 515 IAC 11. The content area "Journalism" will appear on the license.

(b) The holder of a license with journalism is eligible to teach journalism, serve as a newspaper advisor, or serve as a yearbook advisor in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-30)*

515 IAC 8-1-31 Language arts

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 31. (a) The applicant for the initial practitioner license in language arts must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of language arts adopted by the board as set forth in 515 IAC 11. The content area "Language Arts" will appear on the license.

(b) The holder of a license with language arts is only eligible to teach language arts or speech in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-31)*

515 IAC 8-1-32 Library/media

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 32. (a) The applicant for the initial practitioner license in library/media must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of library/media adopted by the board as set forth in 515 IAC 11. The content area "Library/Media" will appear on the license.

(b) The holder of a license with library/media is only eligible to practice in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-32)*

515 IAC 8-1-33 Mathematics

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 33. (a) The applicant for the initial practitioner license in mathematics must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of mathematics adopted by the board as set forth in 515 IAC 11. The content area "Mathematics" will appear on the license.

(b) The holder of a license with mathematics is only eligible to teach mathematics in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-33)*

515 IAC 8-1-34 Reading

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 34 (a) The applicant for the initial practitioner license in reading must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of reading adopted by the board as set forth in 515 IAC 11. The content area "Reading" will appear on the license.

(b) The holder of a license with reading is only eligible to teach reading in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-34)*

515 IAC 8-1-35 Reading specialist
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 35. (a) The applicant for the initial practitioner license in reading specialist must meet the following requirements:

(1) Receive a master's degree in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the advanced standards for the reading specialist adopted by the board as set forth in 515 IAC 11. The content area "Reading Specialist" will appear on the license.

(b) The holder of a license with reading specialist is only eligible to coordinate reading programs for any school district or any school within the district, or teach reading in any school setting as set forth in section 2(b) of this rule. The school setting listed on the reading specialist license must be "All Schools".

(c) The holder of a reading specialist license may obtain an accomplished practitioner license when he or she has completed an educational specialist degree or higher from an institution of higher education that is regionally accredited to offer graduate degrees. *(Professional Standards Board; 515 IAC 8-1-35)*

515 IAC 8-1-36 Science
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 36. (a) The applicant for the initial practitioner license in science must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of science adopted by the board, as set forth in 515 IAC 11, with concentration in one (1) or more of the content areas, life science, physical science, physics, chemistry, and earth/space science. One (1) or more of the following content areas will appear on the license:

(A) "Life Science".
(B) "Physical Science".
(C) "Physics".
(D) "Chemistry".
(E) "Earth/Space Science".

(b) The holder of a license with science is only eligible to teach the specific science content area in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-36)*

515 IAC 8-1-37 Social studies/high school
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 37. (a) The applicant for the initial practitioner license in social studies at the high school setting must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of social studies adopted by the board, as set forth in 515 IAC 11, with concentration in three (3) or more of the content areas, economics, geographical perspectives, government and citizenship, historical perspectives, psychology, and sociology. At least three (3) or more of the following content areas will appear on the license:

(A) "Economics".
(B) "Geographical Perspectives".
(C) "Government and Citizenship".
(D) "Historical Perspectives".
(E) "Psychology".
(F) "Sociology".

(b) The holder of a license with social studies is only eligible to teach in the social studies areas of concentration in the high school setting as set forth in section 2(b) of this rule. The school setting "High School" will appear on the license. *(Professional Standards Board; 515 IAC 8-1-37)*

515 IAC 8-1-38 Social studies other than high school
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 38. (a) The applicant for the initial practitioner license in social studies at any school setting other than high school must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the standards for teachers of social studies adopted by the board as set forth in 515 IAC 11, with concentration in one (1) or more of the content areas, economics, geographical perspectives, government and citizenship, historical perspectives, psychology, and sociology. At least one (1) or more of the following content areas will appear on the license:

(A) "Economics".
(B) "Geographical Perspectives".
(C) "Government and Citizenship".
(D) "Historical Perspectives".
(E) "Psychology".
(F) "Sociology".

(b) The holder of a license with social studies is only eligible to teach in the social studies areas of concentration in the school setting as set forth in section 2(b) of this rule. One (1) or more of the following school settings will appear on the license:

(1) "Early Childhood".

(2) "Elementary; Primary".

(3) "Elementary; Intermediate".

(4) "Middle School/Junior High".

(Professional Standards Board; 515 IAC 8-1-38)

515 IAC 8-1-39 Technology education

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 39. (a) The applicant for the initial practitioner license in technology education must meet the following requirements:

(1) Receive a bachelor's degree, or complete additional course work, in a teacher education program from an institution of higher education that is regionally accredited to offer such a degree.

(2) Successfully meet the national standards as set forth in 515 IAC 11. The content area "Technology Education" will appear on the license.

(b) The holder of a license with technology education is only eligible to teach technology education (industrial technology) in the school setting listed on the license as set forth in section 2(b) of this rule. *(Professional Standards Board; 515 IAC 8-1-39)*

515 IAC 8-1-40 Building level administrator; administrative license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 40. (a) The applicant for the initial practitioner license as a building level administrator must meet the following requirements:

(1) One (1) of the following:

(A) A proficient practitioner instructional license.

(B) A standard license with two (2) years of full-time teaching experience in an accredited school in the grade level and content area listed on the license.

(C) A provisional license with two (2) years of full-time teaching experience in an accredited school in the grade level and content area listed on the license.

(2) Successfully meet the standards for the building level administrator adopted by the board as set forth in 515 IAC 11.

(3) Successfully meet all developmental standards adopted by the board as set forth in 515 IAC 11.

(4) Obtain a master's degree from a regionally accredited institution of higher education.

(5) Successfully complete the school leaders licensure assessment requirements as set forth in 515 IAC 1-4-1(h) and 515 IAC 1-4-1(i).

(6) Be recommended by the licensing advisor of the accredited institution where the applicant's approved qualifying program was completed.

(b) The holder of the building level administrator license is only eligible to serve as a building level administrator or supervisor. The building level administrator licensure applies to all who have the role or responsibility for direct supervision or primary evaluation of other licensed personnel, regardless of title, for example, assistant to, assistant, or deputy.

(c) The holder of a building level administrator license may obtain the accomplished practitioner license when he or she has:

(1) completed seven (7) years of experience as an administrator or supervisor in any accredited school subsequent to the issuance of the initial practitioner license;

(2) completed an educational specialist or higher degree in school administration at an institution regionally accredited to offer the appropriate course work; and

(3) been recommended for the accomplished practitioner license by the licensing advisor at the institution where the approved program was completed.

(Professional Standards Board; 515 IAC 8-1-40)

515 IAC 8-1-41 District level administrator; superintendent; administrative license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 41. (a) The applicant for the initial practitioner license as a superintendent must meet the following requirements:

(1) One (1) of the following:

(A) A proficient practitioner instructional license.

(B) A standard license with two (2) years of full-time teaching experience in an accredited school in the grade level and content area listed on the license.

(C) A provisional license with two (2) years of full-time teaching experience in an accredited school in the grade level and content area listed on the license.

(2) Successfully meet the standards for the district level administrator adopted by the board as set forth in 515 IAC 11.

(3) Successfully meet all developmental standards adopted by the board as set forth in 515 IAC 11.

(4) Obtain an educational specialist degree or higher from a regionally accredited institution of higher education.

(5) Successfully complete the school leaders licensure assessment requirements as set forth in 515 IAC 1-4-1(h) and 515 IAC 1-4-1(i).

(6) Be recommended by the licensing advisor of the accredited institution where the applicant's approved qualifying program was completed.

(b) The holder of the district level administrator; superintendent license is eligible to serve as an administrator or supervisor in any school. The district level administrator; superintendent licensure applies to all who have the role or responsibility for direct supervision or primary evaluation of other licensed personnel, regardless of title, for example, assistant to, assistant, or deputy.

(c) The holder of a district level administrator; superintendent license may obtain the accomplished practitioner license when he or she has:

(1) completed seven (7) years of experience as a central or district administrator or supervisor in any accredited school district subsequent to the issuance of the initial practitioner license;

(2) completed a doctorate in educational administration at an institution regionally accredited to offer the appropriate course work; and

(3) been recommended for the accomplished practitioner license by the licensing advisor at the institution where the approved program was completed.

(Professional Standards Board; 515 IAC 8-1-41)

515 IAC 8-1-42 District level administrator; director of career and technical education; administrative license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 42. (a) The applicant for the initial practitioner license as a director of career and technical education must meet the following requirements:

(1) One (1) of the following:

(A) A proficient practitioner instructional license with career and technical education as defined in 515 IAC 1-1-10 through 515 IAC 1-1-15.

(B) A standard license with two (2) years of full-time teaching experience in an accredited school in the grade level and a vocational education content area listed on the license.

(C) A provisional license with two (2) years of full-time teaching experience in an accredited school in the grade level and vocational education content area listed on the license.

(D) A workplace specialist proficient practitioner instructional license as defined in 515 IAC 10 with a master's degree or higher.

(E) An Occupational Specialist II or III with a master's degree or higher and two (2) years of full-time teaching experience in an accredited vocational school in the grade level and vocational education content area listed on the license.

(2) Successfully meet the standards for the district level administrator adopted by the board as set forth in 515 IAC 11.

(3) Successfully meet all developmental standards adopted by the board as set forth in 515 IAC 11.

(4) Obtain a master's degree or higher from a regionally accredited institution of higher education.

(5) Successfully complete the school leaders licensure assessment requirements as set forth in 515 IAC 1-4-1(h) and 515 IAC 1-4-1(i).

(6) Be recommended by the licensing advisor of the accredited institution where the applicant's approved qualifying program was completed.

(b) The holder of the district level administrator; director of career and technical education license is only eligible to serve as an administrator or supervisor in a career and technical education school. The district level administrator; director of career and technical education licensure applies to all who have the role or responsibility for direct supervision or primary evaluation of other licensed personnel, regardless of title, for example, assistant to, assistant, or deputy.

(c) The holder of a district level administrator; director of career and technical education license may obtain the accomplished practitioner license when he or she has:

(1) completed seven (7) years of experience as a director of career or technical education in any accredited school district subsequent to the issuance of the initial practitioner license;

(2) completed a doctorate in educational administration at an institution regionally accredited to offer the appropriate course work; and

(3) been recommended for the accomplished practitioner license by the licensing advisor at the institution where the approved program was completed.

(Professional Standards Board; 515 IAC 8-1-42)

515 IAC 8-1-43 District level administrator; director of curriculum and instruction; administrative license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 43. (a) The applicant for the initial practitioner license as a director of curriculum and instruction must meet the following requirements:

(1) One (1) of the following:

(A) A proficient practitioner instructional license.

(B) A standard license with two (2) years of full-time teaching experience in an accredited school in the grade level and content area listed on the license.

(C) A provisional license with two (2) years of full-time teaching experience in an accredited school in the grade level and content area listed on the license.

(2) Successfully meet the standards for the district level administrator adopted by the board as set forth in 515 IAC 11.

(3) Successfully meet all developmental standards

adopted by the board as set forth in 515 IAC 11.

(4) Obtain a master's degree or higher from a regionally accredited institution of higher education.

(5) Successfully complete the school leaders licensure assessment requirements as set forth in 515 IAC 1-4-1(h) and 515 IAC 1-4-1(i).

(6) Be recommended by the licensing advisor of the accredited institution where the applicant's approved qualifying program was completed.

(b) The holder of the district level administrator; director of curriculum and instruction license is only eligible to serve as a director of curriculum and instruction administrator or supervisor. The district level administrator; director of curriculum and instruction licensure applies to all who have the role or responsibility for direct supervision or primary evaluation of other licensed personnel, regardless of title, for example, assistant to, assistant, or deputy.

(c) The holder of a district level administrator; director of curriculum and instruction license may obtain the accomplished practitioner license when he or she has:

(1) completed seven (7) years of experience as a director of curriculum and instruction in any accredited school district subsequent to the issuance of the proficient practitioner license;

(2) completed a doctorate in educational administration at an institution regionally accredited to offer the appropriate course work; and

(3) been recommended for the accomplished practitioner license by the licensing advisor at the institution where the approved program was completed.

(Professional Standards Board; 515 IAC 8-1-43)

515 IAC 8-1-44 District level administrator; director of exceptional needs; administrative license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 44. (a) The applicant for the initial practitioner license as a director of exceptional needs must meet the following requirements:

(1) One (1) of the following:

(A) A proficient practitioner instructional license with a content area in communication disorders as defined in section 16 of this rule.

(B) A content area in exceptional needs as defined in section 21 of this rule.

(C) A content area in school services; school psychologist as defined in section 46 of this rule.

(D) A standard license with two (2) years of full-time teaching experience in an accredited school in the grade level and in the special education content area listed on the license.

(E) A school services standard license with school psychologist or speech, language, and hearing clinician and two (2) years of full-time experience in an accredited school district as a school psychologist or speech, language, and hearing clinician.

(F) A provisional license with two (2) years of full-time teaching experience in an accredited school in the grade level and special education content area listed on the license.

(G) A school services provisional license with school psychologist and two (2) years of full-time experience in an accredited school district as a school psychologist.

(2) Successfully meet the standards for the district level administrator adopted by the board as set forth in 515 IAC 11.

(3) Successfully meet all developmental standards adopted by the board as set forth in 515 IAC 11.

(4) Obtain a master's degree or higher from a regionally accredited institution of higher education.

(5) Successfully complete the school leaders licensure assessment requirements as set forth in 515 IAC 1-4-1(h) and 515 IAC 1-4-1(i).

(6) Be recommended by the licensing advisor of the accredited institution where the applicant's approved qualifying program was completed.

(b) The holder of the district level administrator; director of exceptional needs license is only eligible to serve as an administrator or supervisor in any school setting. The district level administrator; director of exceptional needs licensure applies to all who have the role or responsibility for direct supervision or primary evaluation of other licensed personnel, regardless of title, for example, assistant to, assistant, or deputy.

(c) The holder of a district level administrator; director of exceptional needs license may obtain the accomplished practitioner license when he or she has:

(1) completed seven (7) years of experience as a director of exceptional needs in any accredited school district subsequent to the issuance of the proficient practitioner license;

(2) completed a doctorate in educational administration at an institution regionally accredited to offer the appropriate course work; and

(3) been recommended for the accomplished practitioner license by the licensing advisor at the institution where the approved program was completed.

(Professional Standards Board; 515 IAC 8-1-44)

515 IAC 8-1-45 School services; school counselor, school services license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 45. (a) The applicant for the initial practitioner license as a school counselor must meet the following requirements:

(1) Successfully meet the standards for the school service professional and the specialty standards for school counseling adopted by the board as set forth in 515 IAC 11.

(2) Successfully meet all developmental standards adopted by the board as set forth in 515 IAC 11.

(3) Obtain a master's degree from a regionally accredited institution of higher education in a school counseling field.

(4) Be recommended by the licensing advisor of the accredited institution where the applicant's approved qualifying program was completed.

(b) The holder of the school services; school counselor license is only eligible to serve as a school counselor in any school setting. The school services; school counselor licensure applies to all, regardless of title, who have the role or responsibilities of education, career, and school counseling services for students.

(c) The holder of a school services; school counseling license may obtain the accomplished practitioner license when he or she has:

(1) completed five (5) years of experience as a school counselor in any accredited school subsequent to the issuance of the proficient practitioner license;

(2) completed an educational specialist or higher degree in a counseling related field at an institution regionally accredited to offer the appropriate course work; and

(3) been recommended for the accomplished practitioner license by the licensing advisor at the institution where the approved program was completed.

(Professional Standards Board; 515 IAC 8-1-45)

515 IAC 8-1-46 School services; school psychologist, school services license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 46. (a) The applicant for the initial practitioner license as a school psychologist must meet the following requirements:

(1) Successfully meet the standards for the school service professional and the specialty standards for school psychologist adopted by the board as set forth in 515 IAC 11.

(2) Successfully meet all developmental standards adopted by the board as set forth in 515 IAC 11.

(3) Obtain a master's degree from a regionally accredited institution of higher education in a school psychologist related field.

(4) Be recommended by the licensing advisor of the accredited institution where the applicant's approved qualifying program was completed.

(b) The holder of the school services; school psychologist license is only eligible to serve as a school psychologist in any school setting.

(c) The holder of a school services; school psychologist license may obtain the accomplished practitioner license when he or she has:

(1) completed five (5) years of experience as a school counselor in any accredited school subsequent to the issuance of the proficient practitioner license;

(2) completed an educational specialist or higher degree in a counseling related field at an institution regionally accredited to offer the appropriate course work; and

(3) been recommended for the accomplished practitioner license by the licensing advisor at the institution where the approved program was completed or completed all requirements for the National Certified School Psychologist license and holds a currently valid license as a Nationally Certified School Psychologist, as issued by the National Association of School Psychologists (NASP), located at 4340 East West Highway, Suite 402, Bethesda, Maryland 20814, www.nasponline.org.

(Professional Standards Board; 515 IAC 8-1-46)

515 IAC 8-1-47 School services; school nurse, school services license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 47. (a) The applicant for the initial practitioner license as a school nurse must meet the following requirements:

(1) Successfully meet the national standards for school nurse as set forth in 515 IAC 11.

(2) Obtain a bachelor's degree in nursing and a registered nurse's license through the Indiana state board of nursing from a regionally accredited institution of higher education.

(3) Be recommended by the licensing advisor of the accredited institution where the applicant's approved qualifying program was completed.

(b) The holder of the school services; school nurse license is only eligible to serve as a school health services coordinator or a school nurse in any school setting. The school services; school nurse licensure is required for anyone serving as the school health services coordinator.

(c) The holder of a school services; school nurse license may obtain the accomplished practitioner license when he or she has:

(1) completed five (5) years of experience as a school nurse in any accredited school subsequent to the issuance of the proficient practitioner license;

(2) completed a master's or higher degree in a nursing field at an institution regionally accredited to offer the appropriate course work; and

(3) been recommended for the accomplished practitioner license by the licensing advisor at the institution where the approved program was completed.

(Professional Standards Board; 515 IAC 8-1-47)

515 IAC 8-1-48 School services; school social worker, school services license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 48. (a) The applicant for the initial practitioner license as a social worker must meet the following requirements:

(1) Successfully meet the standards for the school service professional and the specialty standards for school social worker adopted by the board as set forth in 515 IAC 11.

(2) Successfully meet all developmental standards adopted by the board as set forth in 515 IAC 11.

(3) Obtain a master's degree from a regionally accredited institution of higher education in a school social work or related field.

(4) Be recommended by the licensing advisor of the accredited institution where the applicant's approved qualifying program was completed.

(b) The holder of the school services; school social worker license is only eligible to serve as a school social worker in any school setting.

(c) The holder of a school services; school social worker license may obtain the accomplished practitioner license when he or she has:

(1) completed an educational specialist or higher degree in a social work related field at an institution regionally accredited to offer the appropriate course work; and

(2) been recommended for the accomplished practitioner license by the licensing advisor at the institution where the approved program was completed.

(Professional Standards Board; 515 IAC 8-1-48)

515 IAC 8-1-49 Attendance officer

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 49. To be assigned as an attendance officer, one must hold any valid license as set forth in sections 9 through 48 of this rule and this section. *(Professional Standards Board; 515 IAC 8-1-49)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 30, 2003 at 10:00 a.m., at the Professional Standards Board, 101 West Ohio Street, Third Floor, Indianapolis, Indiana the Professional Standards Board will hold a public hearing on proposed new rules concerning certain requirements for the issuance of initial practitioner and other licenses issued by the professional standards board. Copies of these rules are now on file at the Professional Standards Board, 101 West Ohio Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Marie Theobald
Executive Director
Professional Standards Board

TITLE 515 PROFESSIONAL STANDARDS BOARD

Proposed Rule
LSA Document #03-11

DIGEST

Adds 515 IAC 9 to provide certain requirements and procedures for the issuance and revocation of various licenses and permits issued by the professional standards board. Effective 30 days after filing with the secretary of state.

515 IAC 9

SECTION 1. 515 IAC 9 IS ADDED TO READ AS FOLLOWS:

ARTICLE 9. ISSUANCE AND REVOCATION OF VARIOUS LICENSES AND PERMITS

Rule 1. General Provisions

515 IAC 9-1-1 Definitions

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1-3; IC 20-10.1-2-1

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

(b) "Academic school year" means the school calendar year as defined by the local school district school board in IC 20-10.1-2-1.

(c) "Accomplished practitioner license", as used in this rule, is equivalent to the professional license as set forth by 515 IAC 1-2-3 and 515 IAC 1-3-2.

(d) "Approved program" means a teacher education program offered by a college or university that has been regionally accredited, NCATE accredited, or accredited by the professional standards board.

(e) "Compact state" means a state that has entered into a reciprocity agreement with Indiana through NASDTEC for instruction, school services, or administration licensure.

(f) "Initial practitioner license", as used in this rule, is equivalent to the initial standard license under IC 20-6.1-3.

(g) "Instructional license" means a teaching license.

(h) "Interstate Compact Agreement" means the reciprocity agreement Indiana belongs to through the National Association of State Directors of Teacher Education (NASDTEC). NASDTEC is located at 39 Nathan Ellis Highway, PMB #134, Mashpee, Massachusetts 02649-3267, Web site: www.nasdtec.org.

(i) "Licensing advisor" means a representative of a teacher training institution within Indiana who acts as a teacher advisor for, and at the request of, the applicant.

(j) "National Council for Accreditation of Teacher Education" or "NCATE" means that the institution has met all requirements for NCATE accreditation for their teacher training institution. NCATE is located at 2010 Massachusetts Avenue NW, Suite 500, Washington, D.C. 20036-1023, Web site: www.ncate.org.

(k) "Performance-based assessment" means standards based program.

(l) "Proficient practitioner license", as used in this rule, is equivalent to a renewed standard license under 515 IAC 1-2-3.

(m) "School setting" means the school building where the professional educator practices.

(n) "Teacher training institution" means a college or university offering a program of teacher education approved by the professional standards board. *(Professional Standards Board; 515 IAC 9-1-1)*

515 IAC 9-1-2 Certificates and licenses issued under prior rules; recognition

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 2. (a) All licenses and certificates issued under the provisions of prior rules governing teacher education and certification shall, at the discretion of the board, retain the validity and coverage provided by such licenses or certificates and holders of such licenses or certificates shall have the option of following the gradation steps in force at the date of issue until July 1, 2006. After July 2, 2006, all applicants must meet the requirements as stated in 515 IAC 8 and this article.

(b) All life licenses issued under prior rules shall continue to be valid for the life of the holder. All other first grade or professional licenses issued under prior rules shall be considered as accomplished practitioner licenses providing the holder has earned the master's degree or has earned national board certification.

(c) All provisional or standard licenses issued under prior rules shall be considered equivalent to the proficient practitioner license to be issued under this article.

(d) All persons who have begun licensing programs under prior rules will have until July 1, 2006, to complete the program. An individual who submits an application after July 1, 2006, will be subject to 515 IAC 8. *(Professional Standards Board; 515 IAC 9-1-2)*

515 IAC 9-1-3 Validation dates of licenses

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 3. (a) The proficient practitioner license is valid for five (5) years from the date the application has been received by the board.

(b) The proficient practitioner license may be renewed for a five (5) year period when renewal requirements have been completed.

(c) The proficient practitioner license may be converted to the accomplished practitioner license when the requirements have been completed.

(d) The accomplished practitioner license is valid for ten (10) years from the date the application has been received by the board.

(e) The accomplished practitioner license may be renewed for a five (5) year period when renewal requirements have been completed. All renewal requirements must be completed in the last five (5) years of the validity period of the accomplished practitioner license.

(f) All licenses that are valid on the first day of the academic school calendar shall be considered valid for the duration of the school calendar, as approved by the school board. *(Professional Standards Board; 515 IAC 9-1-3)*

515 IAC 9-1-4 Validation dates of permits

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 4. (a) Emergency permits shall be valid only for the academic school calendar, as defined in 515 IAC 9-2-3, for which they are issued.

(b) Reciprocal permits shall be valid for one (1) year from the date the application has been received by the board. The reciprocal permit may be renewed annually upon completion of six (6) semester hours of course work leading to the proficient practitioner license or other appropriate progress toward the successful completion of an approved program as recommended by the Indiana licensing advisor. It may be converted to the initial practitioner license when the holder has completed all deficiencies for the proficient practitioner

license when the holder has completed all deficiencies, including all requirements of the assessment program as described in 515 IAC 1-4.

(c) All reciprocal permits that are valid on the first day of the academic school calendar shall be valid for the duration of that school calendar as approved by the school board.
(Professional Standards Board; 515 IAC 9-1-4)

515 IAC 9-1-5 Indiana graduates; application requirements

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 5. (a) All persons who have earned the qualifying degree and completed an approved program of preparation at an Indiana institution of higher education shall initiate licensing procedures with the licensing advisor of the institution granting the qualifying degree.

(b) The following materials must be provided to the board:

(1) The appropriate completed application form for licensing. The application must contain the signature of the official licensing advisor of the institution granting the qualifying degree, specify the approved programs completed by the applicant and, if applicable, provide evidence of teaching experience.

(2) Passing scores on any assessments, if applicable. Each applicant shall request that the testing service send the official score report to the board.

(3) The established fee for the issuance of the license.

(4) The license being renewed, if applicable.

(5) Any required evidence of the applicant's criminal history, including fingerprints and the applicant's Social Security number.

(6) Applicants for licensing shall provide all necessary evidence of eligibility.

(7) Any additional documentation.
(Professional Standards Board; 515 IAC 9-1-5)

515 IAC 9-1-6 Out-of-state graduates; teacher applicants

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 6. A person who has earned the qualifying degree from an institution outside of Indiana and has not completed an approved teacher education program at an Indiana institution of higher education shall submit the following materials to the board:

(1) The appropriate completed application form specifying the content area or areas and school setting or settings of the instructional license desired.

(2) The established fee for the issuance of the license.

(3) A copy of the applicant's currently valid out-of-state teaching, administration, and/or school services license.

(4) An official transcript from each institution of higher education attended.

(5) Any required evidence of the applicant's criminal history, including fingerprints and the applicant's Social Security number.

(6) Passing scores on any assessments, if applicable. Each applicant shall request that the testing service send the official score report to the board.

(7) If the applicant has teaching, administration, or school services experience, he or she must provide verification of the experience, including the grade level and subject taught, dates of employment, and the accreditation status of the school or schools where the applicant completed his or her teaching experience.
(Professional Standards Board; 515 IAC 9-1-6)

515 IAC 9-1-7 Out-of-state teacher applicants; initial practitioner license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 7. (a) An out-of-state applicant is eligible for an initial practitioner license if he or she meets the requirements for a license and either:

(1) holds a currently valid license and a baccalaureate degree from an approved teacher education program located in a state that is a member of the Interstate Compact Agreement; or

(2) verifies completion of a baccalaureate teacher education program accredited by the NCATE. The institution must have been accredited by NCATE at the time the person completed the approved program.

(b) A graduate of an NCATE-approved teacher education program is eligible for an Indiana initial practitioner license in the applicant's content area if that content area is also offered in Indiana. The board may require the completion of the NCATE recommendation form by an authorized licensing official of the degree granting institution for clarification.

(c) A graduate of an approved teacher education program in an Interstate Compact Agreement state must hold a certificate of eligibility or a currently valid teaching license from the Compact state that is equivalent to an Indiana initial practitioner license. The professional standards board may require the completion of the Interstate Compact Agreement recommendation form by an authorized licensing official of the degree granting institution for clarification.

(d) An individual qualifying under subsection (b) or (c) will receive licensing in all content areas shown on the valid Compact state teaching license if the areas of licensing are comparable to Indiana content areas, providing all minimum requirements have been met.

(e) A graduate of an institution not located within a Compact state is eligible for an Indiana initial or proficient practitioner license if he or she holds a currently valid instructional, administration, and/or school services license from that state and has met all minimum requirements. *(Professional Standards Board; 515 IAC 9-1-7)*

515 IAC 9-1-8 Out-of-state teacher applicants; reciprocal permit

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 8. (a) An out-of-state applicant is eligible for an Indiana reciprocal permit, if he or she holds a license or certificate of eligibility issued by another state and has met all requirements of a teacher education program at a regionally accredited institution, and a currently valid out-of-state teaching license that is comparable to an Indiana instructional license but do not qualify for an Indiana initial or proficient practitioner license.

(b) A reciprocal permit will be issued to a graduate of an accredited institution located in a state other than Indiana who has met all of the requirements for an initial or proficient practitioner instructional license except for the proficiency exam and some of the course work. A reciprocal permit will be issued only in the content areas of the out-of-state license that are equivalent to Indiana content areas and the school settings of the out-of-state license that are equivalent to Indiana school settings.

(c) An initial practitioner license will be issued when all course work and proficiency examination deficiencies have been corrected, if the applicant has not met the requirements for a proficient practitioner license.

(d) A proficient practitioner teaching license will be issued when all course work and proficiency examination deficiencies have been corrected, if the applicant has met all requirements of performance-based assessment or can verify three (3) years of full-time teaching experience appropriate to the license in an accredited kindergarten through grade 12 school under a valid license.

(e) A reciprocal permit is valid for one (1) year and may be renewed up to four (4) times. A reciprocal permit holder may renew the license after the first year by correcting all proficiency exam deficiencies and earning six (6) semester hours of course work or equivalent appropriate progress, toward an initial or proficient practitioner license. Any subsequent renewal requires the completion of six (6) semester hours of course work or equivalent appropriate progress, toward an initial or proficient practitioner license. *(Professional Standards Board; 515 IAC 9-1-8)*

515 IAC 9-1-9 Reciprocal permit for applicants completing an Indiana teacher education program

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 9. (a) An applicant is eligible for an Indiana reciprocal permit, if he or she has met all requirements of a teacher education program at a board accredited institution in Indiana, and holds a currently valid out-of-state teaching license that is comparable to the Indiana instructional license, but has not completed Indiana continuing education or proficiency exam requirements.

(b) In order for a reciprocal permit to be issued, the individual must have the recommendation of the Indiana licensing advisor at the institution where the approved program was completed.

(c) An initial practitioner license will be issued when continuing education and/or proficiency examination deficiencies have been completed if the applicant has not met all requirements of performance-based assessment.

(d) A proficient practitioner teaching license will be issued when continuing education and proficiency examination deficiencies have been corrected, if the applicant has met all requirements of performance-based assessment or can verify three (3) years of full-time teaching experience appropriate to the license in an accredited kindergarten through grade 12 school under a valid license in another state. *(Professional Standards Board; 515 IAC 9-1-9)*

515 IAC 9-1-10 Out-of-state teacher applicants; institutions not accredited by a state, regional, or national accrediting agency

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 10. Applicants graduating from institutions not accredited by a state, regional, or national accrediting agency to offer degrees in teacher education shall submit their credentials for evaluation to an Indiana teacher education institution accredited by NCATE to offer a master's degree in education. The board will recognize only those credits accepted by an Indiana NCATE institution for degree purposes or recognized as comparable to course work completed at the Indiana NCATE school. When the applicant has successfully completed a teacher education program, the Indiana NCATE institution may recommend the individual for licensing. *(Professional Standards Board; 515 IAC 9-1-10)*

515 IAC 9-1-11 Out-of-state graduates; administration and school service applicants

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 11. A person applying for an administrative, supervisory, or school services license who has earned the qualifying degree at a regionally or nationally accredited institution outside of Indiana and has not completed an approved

qualifying program at an Indiana institution of higher education shall submit the following materials to the board:

(1) The appropriate completed application form specifying the content area or areas and school setting or settings of the instructional license desired.

(2) A copy of the currently valid out-of-state license, if applicable.

(3) The established fee for the issuance of the license.

(4) A verification of all teaching, administration, and school services experience, if applicable.

(5) Any required evidence of the applicant's criminal history, including fingerprints and Social Security number.

(6) An official transcript from each institution attended. *(Professional Standards Board; 515 IAC 9-1-11)*

515 IAC 9-1-12 Out-of-state administrative or school services programs graduates; proficient practitioner

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 12. A graduate of a NCATE institution approved to offer administrative or school services programs is eligible for the comparable Indiana proficient practitioner license if he or she has completed the necessary years of teaching experience at the appropriate level in an accredited school, holds the degree and holds a currently valid out-of-state license in the area comparable to the Indiana proficient practitioner license. *(Professional Standards Board; 515 IAC 9-1-12)*

515 IAC 9-1-13 Out-of-state applicants for administrative and school services licenses; Indiana reciprocal permit

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 13. (a) An out-of-state applicant for an administrative and school services license is eligible for an Indiana reciprocal permit in the desired area if he or she holds a currently valid out-of-state license or certificate of eligibility in the appropriate content area and holds the degree and has the necessary years of teaching experience at the appropriate level in an accredited school as specified under 515 IAC 8-1-40 through 515 IAC 8-1-48.

(b) The holder of a reciprocal permit in administration or school services is eligible for an Indiana initial practitioner license in administration or school services when all deficiencies on the reciprocal permit are corrected if the applicant has not met all requirements of performance-based assessment.

(c) The holder of a reciprocal permit in administration or school services is eligible for an Indiana proficient practitioner administration or school services license when all course work and proficiency examination deficiencies have been corrected, if the applicant has met all requirements of 515 IAC 1-4 or can verify three (3) years of full-time administration or school services experience appropriate to the license in an accredited kindergarten through grade 12 school under a valid license.

(d) The Indiana reciprocal permit in administration or school services is valid for one (1) year and may be renewed up to four (4) times. Each renewal requires the completion of six (6) semester hours of course work or equivalent appropriate progress toward the fulfillment of the requirements of a standard license. *(Professional Standards Board; 515 IAC 9-1-13)*

515 IAC 9-1-14 Creditable experience for licensing

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1-4-7

Sec. 14. (a) The following teaching experiences shall be recognized as acceptable activities in computing experience required for licensing:

(1) Experience in any Indiana school that was certified, accredited, or commissioned by the division of performance-based accreditation of the Indiana state board of education during the time such experience was acquired.

(2) Experience in a school outside Indiana but within the United States, Commonwealth of the United States, or Canadian provinces if such school was certified, accredited, commissioned, or equally recognized by the duly authorized agency of the state during the time such experience was acquired.

(3) Experience in a school maintained by the United States government for children of military personnel and other governmental employees either in the United States or in a foreign country.

(4) Teaching experience as a Peace Corps volunteer.

(5) Employment for a period of sixty (60) days or more under a temporary contract under IC 20-6.1-4-7 or equivalent out-of-state experience as defined by the board.

(b) Responsibility for verifying any experience to be credited will rest with the employing school superintendent or authorized official of the federal or state department or agency.

(c) The minimum amount of service to be counted as one (1) year of creditable experience shall be the equivalent of one hundred twenty (120) full days acquired during the regular school calendar. A half-year shall be credited for service equivalent to sixty (60) full days, or more, but less than one hundred twenty (120), acquired during the regular school calendar. Two (2) half years of credit may be

combined for credit not to exceed one (1) year. No more than one (1) year of creditable service shall be granted for services rendered within a twelve (12) month period beginning July 1 and ending June 30.

(d) Active military experience shall qualify the holder of the proficient practitioner license for extended validation of said license for a period equivalent to the time spent in active duty military service and not exceeding two (2) years providing the military service occurred during the validation period of the initial, proficient, or accomplished practitioner license. Copies of military discharge papers must be submitted to the board to qualify for this extended validation. *(Professional Standards Board; 515 IAC 9-1-14)*

515 IAC 9-1-15 Field experience requirements; exemptions

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 15. Field experience shall be as follows:

(1) Those persons with three (3) years of full-time teaching experience may be exempt from field experience requirements provided such experience has been at the appropriate grade level and in the area of licensing desired, and the candidate has met the total requirement for professional education, including the recommendation of the institution of higher education in Indiana where the program has been or is being completed.

(2) All other candidates shall have their eligibility determined by the staff of the board.

(3) Field experience must be satisfactorily completed at the school setting accredited by the state or at an equally recognized school in an out-of-state setting.

(4) The Indiana proficient practitioner license qualifies the holder to serve as a supervising teacher in all content areas and school settings designated on the license. The final selection of the supervising teacher meeting these qualifications shall be the joint responsibility of the teacher education institution and the superintendent of the cooperating state commissioned school and with the approval of the supervising teacher.

(Professional Standards Board; 515 IAC 9-1-15)

515 IAC 9-1-16 License revocation, suspension, surrender; authority; grounds; procedures

Authority: IC 20-1-1.4-7
Affected: IC 4-21.5-3; IC 20-1-1.4; IC 20-6.1-4-13

Sec. 16. (a) The board may, on the written recommendation of the superintendent of public instruction, revoke or suspend any license issued by the board under 515 IAC 1-1 or this rule or under prior rules governing teacher education and licensing.

(b) A license may be revoked or suspended for immorality, misconduct in office, incompetency, or willful neglect of duty. The grounds of these charges may include, but are not limited to, the following:

(1) The person to whom the license was issued obtained the license by material misrepresentation or fraudulent means.

(2) The person to whom the license was issued has had a license revoked or suspended in another state.

(3) The person to whom the license was issued has been convicted of a misdemeanor or a felony that directly relates to the ability to perform the person's teaching duties. Offenses that constitute a violation under this subsection may include crimes of moral turpitude, drug related offenses, or the issuing of false statements.

(4) The person to whom the license was issued is subject to license suspension under IC 20-6.1-4-13.

(c) The professional standards board may suspend a license under the provisions of this section for a period of time not to exceed two (2) years calculated from the date of imposition. At the conclusion of any suspension period imposed by the professional standards board, the license shall be reinstated upon written request of the license holder.

(d) The validity period of a license shall not be extended and any renewal or professionalization requirements shall not be waived at the time of reinstatement of a license suspended under subsection (c), revoked under subsection (e), or surrendered under subsection (f).

(e) The professional standards board may revoke a license under this section for an indeterminate period of time; provided, however, that the person suffering the revocation may petition the professional standards board for reinstatement at any time subsequent to the passage of two (2) years calculated from the date of revocation.

(f) A license surrendered to the professional standards board pursuant to a plea agreement, probation agreement, sentencing agreement, or sentence or to avoid legal action will be treated as a revoked license. The holder of the license may petition the professional standards board for reinstatement of the license at any time subsequent to the passage of two (2) years calculated from the date the surrender was accepted by the professional standards board, providing the petition for reinstatement is not in violation of any court order or court-approved agreement.

(g) If, prior to seeking an initial teaching license or the renewal of a teaching license, an applicant has committed an act for which a teaching license may be suspended or revoked, the application may be denied on that basis. The applicant may petition for administrative review of that denial as allowed by IC 4-21.5-3 in which case a hearing,

known as a fitness hearing, will be held to determine the applicant's fitness to hold a teaching license. If such a petition for review is filed, the final decision regarding the application will be based on the outcome of the fitness hearing.

(h) An individual who petitions the professional standards board for reinstatement of a revoked or surrendered license and an individual required to participate in a fitness hearing under subsection (g) before receiving an initial license shall have the burden of proving fitness to hold a license. In making a determination of fitness, the professional standards board shall consider the following factors:

(1) The likelihood the conduct or offense adversely affected, or would affect, students or fellow teachers, and the degree of adversity anticipated.

(2) The proximity or remoteness in time of the conduct or offense.

(3) The type of teaching credential held or sought by the individual.

(4) Extenuating or aggravating circumstances surrounding the conduct or offense.

(5) The likelihood of recurrence of the conduct or offense.

(6) The extent to which a decision not to issue the license would have a chilling effect on the individual's constitutional rights or the rights of other teachers.

(7) Evidence of rehabilitation, such as participation in counseling, self-help support groups, community service, gainful employment subsequent to the conduct or offense, and family and community support.

(i) IC 4-21.5-3 shall govern the following proceedings:

(1) A hearing on the suspension of a license under subsection (c).

(2) A hearing on the revocation of a license under subsection (e).

(3) A reinstatement hearing under subsection (e).

(4) A reinstatement hearing under subsection (f).

(5) A fitness hearing under subsection (g).

(j) The sanctions provided for under this section are intended to be remedial rather than punitive.

(k) Any proceeding under subsection (i) may be conducted by the professional standards board or, at its discretion, by an administrative law judge. *(Professional Standards Board; 515 IAC 9-1-16)*

515 IAC 9-1-17 Instructional emergency permits

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1-3-10

Sec. 17. (a) An instructional emergency permit issued after July 1, 2004, is valid only for the school year during which it is granted, and expires July 31 of the school year for which it is issued. Until July 1, 2004, this process is guided by the rule for limited license in 515 IAC 1-2-20.

(b) To qualify for an instructional emergency permit, the applicant must submit the following:

(1) An application for an instructional emergency permit submitted by an employing school superintendent.

(2) The established fee for the issuance of the license.

(3) The license being renewed, if applicable.

(4) Any required evidence of the applicant's criminal history, including fingerprints and Social Security number.

(5) All necessary evidence of eligibility.

(6) Any additional documentation.

(7) A baccalaureate degree from a state or regionally accredited institution.

(8) Verification of progress toward meeting the standards in the content area and identification of a program where the applicant can obtain licensure in three (3) years.

(9) Verification from the employing school superintendent certifying an emergency need for the applicant in the content area or areas or the school setting or settings of the request.

(10) Verification from the licensing advisor where the program will be completed that the candidate has enrolled in an approved program in the subject area or areas or school setting or settings of the request and has submitted a written plan for completion of the program.

(11) An application for an instructional emergency permit submitted after July 1 during the school year requested, but no later than twelve (12) weeks after the teacher begins actual service. The instructional emergency permit must be submitted no later than April 15 of the school year during which it is requested.

(c) The instructional emergency permit may be renewed at the request of the employing school superintendent every year upon completion by the applicant of six (6) semester hours of course work directed toward an initial license in the emergency permit subject area or school setting or verification of appropriate progress by the licensing advisor where the applicant is completing an approved program.

(d) The renewal of an instructional emergency permit requires the recommendation of the Indiana licensing advisor at the institution where the course work toward a planned program was completed, or a letter of recommendation from the equivalent of a licensing advisor at a regionally accredited institution in another state.

(e) An applicant may earn a one (1) time nonrenewable emergency permit for continuing education if they can verify that they have not been employed as a full-time or part-time teacher, administrator, or school services personnel, not including a substitute teacher, at any time three (3) years prior to the date of application.

(f) The instructional emergency permit may be renewed

up to two (2) additional times in the same content area or areas or school setting or settings.

(g) A candidate for an initial license who fails to demonstrate proficiency as required by IC 20-6.1-3-10(a) and is eligible under IC 20-6.1-3-10 and this section for a one (1) year, nonrenewable instructional emergency permit if the following criteria are met:

(1) The candidate holds a baccalaureate degree from a state or regionally accredited institution.

(2) The candidate has completed an approved teacher education preparation program in the content area requested on the instructional emergency permit.

(3) The candidate has successfully demonstrated proficiency in all three (3) Praxis I tests, reading, writing, and mathematics.

(4) The candidate has taken the Praxis II Specialty Area or Areas test in the content area or areas, but has not successfully passed it.

(5) Application for the instructional emergency permit is submitted through an employing superintendent who has certified an emergency need for personnel in the subject area areas or school setting or settings in which the candidate has completed an approved teacher education preparation program.

(6) The application for an instructional emergency permit must be submitted after July 1 of the school year requested, but no later than twelve (12) weeks after the teacher begins actual service. The instructional emergency permit must be submitted no later than April 15 of the school year during which it is requested.

(h) An instructional emergency permit under subsection (g) is:

(1) not renewable; and

(2) issued only in the content area or areas or school setting settings in which the candidate has completed an approved teacher education preparation program.

(i) The holder of an instructional emergency permit under subsection (g):

(1) may retake the examination in which proficiency was not demonstrated an unlimited number of times;

(2) is advised to seek remediation in order to demonstrate proficiency on the remaining examination; and

(3) is advised to contact the institution at which the individual completed the teacher education preparation program for counseling concerning remediation.

(Professional Standards Board; 515 IAC 9-1-17)

515 IAC 9-1-18 Emergency permits for assistant principal

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 18. (a) An emergency permit for assistant principal issued after July 1, 2004, is valid only for the school year during which it is granted, and expires July 31 of the school year for which it is issued.

(b) To qualify for an emergency permit for assistant principal, the applicant must submit the following:

(1) An application for an emergency permit for assistant principal submitted by an employing school superintendent.

(2) The established fee for the issuance of the license.

(3) The license being renewed, if applicable.

(4) Any required evidence of the applicant's criminal history, including fingerprints and Social Security number.

(5) All necessary evidence of eligibility.

(6) Any additional documentation.

(7) A baccalaureate degree from a state or regionally accredited institution.

(8) Verification of a valid proficient practitioner instructional license, a valid standard, provisional, or professional teaching license with two (2) years of full-time teaching experience or the equivalent valid license in another state with two (2) years of full-time teaching experience.

(9) Verification from the employing school superintendent certifying an emergency need for the position of assistant principal and that the applicant has been assigned a mentor as defined by the school district.

(10) Verification from the licensing advisor where the program will be completed that the candidate has enrolled in an approved program for building level administrator and has submitted a written plan for completion of the program.

(11) An application for an emergency permit for assistant principal must be submitted after July 1 of the school year requested, but no later than twelve (12) weeks after the assistant principal begins actual service. The emergency permit for assistant principal must be submitted no later than April 15 of the school year requested.

(c) The emergency permit for assistant principal may be renewed at the request of the employing school superintendent every year upon completion by the applicant of six (6) semester hours of course work directed toward an administrator license as a building level administrator or verification of appropriate progress as verified by the licensing advisor where the applicant is completing an approved program.

(d) The renewal of an emergency permit for assistant principal requires the recommendation of the Indiana licensing advisor at the institution where the course work toward a planned program was completed.

(e) The emergency permit for assistant principal may be renewed up to two (2) times.

(f) An applicant may earn a one (1) time nonrenewable emergency permit for continuing education if they can verify that they have not been employed as a full-time or part-time teacher, administrator, or school services personnel, not including a substitute teacher, at any time three (3) years prior to the date of application.

(g) The holder of the emergency permit for assistant principal is required to successfully complete all assessments unless they have already been successfully completed.

(h) Upon completion of the requirements, the holder of the emergency permit for assistant principal will be issued an initial practitioner administrator license, unless the holder has been issued a proficient practitioner administration license in another position. *(Professional Standards Board; 515 IAC 9-1-18)*

515 IAC 9-1-19 Emergency permits for building level administrator

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 19. (a) An emergency permit for building level administrator issued after July 1, 2004, is valid only for the school year during which it is granted, and expires July 31 of the school year for which it is issued.

(b) To qualify for an emergency permit for building level administrator, the applicant must submit the following:

(1) An application for an emergency permit for building level administrator submitted by an employing school superintendent.
(2) The established fee for the issuance of the license.
(3) The license being renewed, if applicable.
(4) Any required evidence of the applicant's criminal history, including fingerprints and Social Security number.
(5) All necessary evidence of eligibility.
(6) Any additional documentation as required by law.
(7) Verification of a baccalaureate degree from a state or regionally accredited institution and completion of twelve (12) semester hours of an approved building level administrator program.
(8) Verification of a valid proficient practitioner instructional license, a valid standard, provisional, or professional teaching license with two (2) years of full-time teaching experience or the equivalent valid license in another state with two (2) years of full-time teaching experience.
(9) Verification from the employing school superintendent certifying an emergency need for the position of building level administrator and that the applicant has been assigned a mentor as defined by the school district.
(10) Verification from the licensing advisor where the program will be completed that the candidate has enrolled in an approved program for building level administrator and has submitted a written plan for completion of the program.
(11) An application for an emergency permit for building level administrator must be submitted after July 1 of the school year requested, but no later than twelve (12) weeks after the building level administrator begins actual service. The emergency permit for building level administrator must be submitted no later than April 15 of the school year requested.

(c) The emergency permit for building level administrator may be renewed at the request of the employing school superintendent every year upon completion of six (6) semester hours of course work directed toward an administrator license as a building level administrator or verification of appropriate progress by the licensing advisor where the applicant is completing an approved program.

(d) The renewal of an emergency permit for building level administrator requires the recommendation of the Indiana licensing advisor at the institution where the course work toward a planned program was completed.

(e) The emergency permit for building level administrator may be renewed up to two (2) times.

(f) An applicant may earn a one (1) time nonrenewable emergency permit for continuing education if they can verify that they have not been employed as a full-time or part-time teacher, administrator, or school services personnel, not including a substitute teacher, at any time three (3) years prior to the date of application.

(g) The holder of the emergency permit for building level administrator is required to successfully complete all assessments, unless they have already been successfully completed.

(h) Upon completion of the requirements, the holder of the emergency permit for building level administrator will be issued an initial practitioner administrator license, unless the holder has been issued a proficient practitioner administration license in another position. *(Professional Standards Board; 515 IAC 9-1-19)*

515 IAC 9-1-20 Emergency permits for director of career and technical education

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 20. (a) An emergency permit for director of career and technical education issued after July 1, 2004, is valid only for the school year during which it is granted, and expires July 31 of the school year for which it is issued.

(b) To qualify for an emergency permit for director of career and technical education, the applicant must submit the following:

(1) An application for an emergency permit for director of career and technical education submitted by an employing school superintendent.

(2) The established fee for the issuance of the license.

(3) The license being renewed, if applicable.

(4) Any required evidence of the applicant's criminal history, including fingerprints and Social Security number.

(5) All necessary evidence of eligibility.

(6) Any additional documentation as required by law.

(7) Verification of a master's degree from a state or regionally accredited institution.

(8) Verification of one (1) of the following:

(A) A valid proficient practitioner career and technical education license instructional license with two (2) years of full-time teaching experience in a career and technical education classroom.

(B) A valid proficient practitioner workplace specialist license.

(C) A valid standard, provisional, or professional teaching license in career and technical education and two (2) years of full-time teaching experience in a career and technical education classroom.

(D) An occupational specialist license with two (2) years of full-time teaching experience.

(E) A license equivalent to the proficient practitioner career and technical education license in another state with two (2) years of full-time teaching experience in a career and technical education classroom.

(9) Verification from the employing school superintendent certifying an emergency need for the position of career and technical education director and that the applicant has been assigned a mentor as defined by the school district.

(10) Verification from the licensing advisor where the program will be completed that the candidate has enrolled in an approved program for director of career and technical education and has a plan for completion of the program as verified by the licensing advisor.

(11) An application for an emergency permit for director of career and technical education must be submitted after July 1 of the school year requested, but no later than twelve (12) weeks after the director of career and technical education begins actual service. The emergency permit for director of career and technical education must be submitted no later than April 15 of the school year requested.

(c) The emergency permit for director of career and technical education may be renewed at the request of the employing school superintendent every year upon completion of six (6) semester hours of course work directed toward an administrator license as a director of career and technical education or verification of appropriate progress by the licensing advisor where the applicant is completing an approved program.

(d) The renewal of an emergency permit for director of career and technical education requires the recommendation of the Indiana licensing advisor at the institution where the course work toward a planned program was completed.

(e) The emergency permit for director of career and technical education may be renewed up to two (2) times.

(f) An applicant may earn a one (1) time nonrenewable emergency permit for continuing education if they can verify that they have not been employed as a full-time or part-time teacher, administrator, or school services personnel, not including a substitute teacher, at any time three (3) years prior to the date of application.

(g) The holder of the emergency permit for director of career and technical education is required to successfully complete all assessments unless they have already been successfully completed.

(h) Upon completion of the requirements, the holder of the emergency permit for director of career and technical education will be issued an initial practitioner administrator license unless the holder has been issued a proficient practitioner administration license in another position. *(Professional Standards Board; 515 IAC 9-1-20)*

515 IAC 9-1-21 Emergency permits for director of curriculum and instruction

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 21. (a) An emergency permit for director of curriculum and instruction issued after July 1, 2004, is valid only for the school year during which it is granted, and expires July 31 of the school year for which it is issued.

(b) To qualify for an emergency permit for director of curriculum and instruction, the applicant must submit the following:

(1) An application for an emergency permit for director of curriculum and instruction submitted by an employing school superintendent.

(2) The established fee for the issuance of the license.

(3) The license being renewed, if applicable.

(4) Any required evidence of the applicant's criminal history, including fingerprints and Social Security number.

(5) All necessary evidence of eligibility.

(6) Any additional documentation as required by law.

(7) Verification of a bachelor's degree from a state or regionally accredited institution.

(8) Verification of a valid proficient practitioner instructional license, a valid standard, provisional, or professional teaching license with two (2) years of full-time teaching experience.

(9) Verification from the employing school superintendent certifying an emergency need for the position of director of curriculum and instruction and that the applicant has been assigned a mentor as defined by the school district.

(10) Verification from the licensing advisor where the program will be completed that the candidate has enrolled in an approved program for director of curriculum and instruction and has a plan for completion of the program as verified by the licensing advisor.

(11) An application for an emergency permit for director of curriculum and instruction must be submitted after July 1 of the school year requested, but no later than twelve (12) weeks after the director of curriculum and instruction begins actual service. The emergency permit for director of curriculum and instruction must be submitted no later than April 15 of the school year requested.

(c) The emergency permit for director of curriculum and instruction may be renewed at the request of the employing school superintendent every year upon completion of six (6) semester hours of course work directed toward an administrator license as a director of curriculum and instruction or verification of appropriate progress by the licensing advisor where the applicant is completing an approved program.

(d) The renewal of an emergency permit for director of curriculum and instruction requires the recommendation of the Indiana licensing advisor at the institution where the course work toward a planned program was completed.

(e) The emergency permit for director of curriculum and instruction may be renewed up to two (2) times.

(f) An applicant may earn a one (1) time nonrenewable emergency permit for continuing education if they can verify that they have not been employed as a full-time or part-time teacher, administrator, or school services personnel, not including a substitute teacher, at any time three (3) years prior to the date of application.

(g) The holder of the emergency permit for director of curriculum and instruction is required to successfully complete all assessments unless they have already been successfully completed.

(h) Upon completion of the requirements, the holder of the emergency permit for director of curriculum and instruction will be issued an initial practitioner administrator license unless the holder has been issued a proficient practitioner administration license in another position. *(Professional Standards Board; 515 IAC 9-1-21)*

515 IAC 9-1-22 Emergency permits for director of exceptional needs

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 22. (a) An emergency permit for director of exceptional needs issued after July 1, 2004, is valid only for the school year during which it is granted, and expires July 31 of the school year for which it is issued.

(b) To qualify for an emergency permit for director of exceptional needs, the applicant must submit the following:

(1) An application for an emergency permit for director of exceptional needs submitted by an employing school superintendent.

(2) The established fee for the issuance of the license.

(3) The license being renewed, if applicable.

(4) Any required evidence of the applicant's criminal history, including fingerprints and Social Security number.

(5) All necessary evidence of eligibility.

(6) Any additional documentation as required by law.

(7) Verification of a bachelor's degree from a state or regionally accredited institution.

(8) Verification of one (1) of the following:

(A) A valid exceptional needs proficient practitioner instructional license with two (2) years of full-time teaching experience in an exceptional needs program.

(B) A proficient practitioner school services license in school psychology with two (2) years of full-time experience in an exceptional needs program.

(C) A valid special education standard or provisional with two (2) years of full-time teaching experience in an exceptional needs program or professional teaching license in exceptional needs.

(D) A valid school services personnel license with school psychology or speech, language, and hearing clinician and two (2) years of full-time experience in an exceptional needs program.

(9) Verification from the employing school superintendent certifying an emergency need for the position of director of exceptional needs and that the applicant has been assigned a mentor as defined by the school district.

(10) Verification from the licensing advisor where the program will be completed that the candidate has enrolled in an approved program for director of exceptional needs and has a plan for completion of the program as verified by the licensing advisor.

(11) An application for an emergency permit for director of exceptional needs must be submitted after July 1 of the school year requested, but no later than twelve (12) weeks after the director of exceptional needs begins actual service. The emergency permit for director of exceptional needs must be submitted no later than April 15 of the school year requested.

(c) The emergency permit for director of exceptional needs may be renewed at the request of the employing school superintendent every year upon completion of six (6) semester hours of course work directed toward an administrator license as a director of exceptional needs or verification of appropriate progress by the licensing advisor where the applicant is completing an approved program.

(d) The renewal of an emergency permit for director of exceptional needs requires the recommendation of the Indiana licensing advisor at the institution where the course work toward a planned program was completed.

(e) The emergency permit for director of exceptional needs may be renewed up to two (2) times.

(f) An applicant may earn a one (1) time nonrenewable emergency permit for continuing education if they can verify that they have not been employed as a full-time or part-time teacher, administrator, or school services personnel, not including a substitute teacher, at any time three (3) years prior to the date of application.

(g) The holder of the emergency permit for director of exceptional needs is required to successfully complete all assessments unless they have already been successfully completed.

(h) Upon completion of the requirements, the holder of the emergency permit for director of exceptional needs will be issued an initial practitioner administrator license unless the holder has been issued a proficient practitioner administration license in another position. *(Professional Standards Board; 515 IAC 9-1-22)*

515 IAC 9-1-23 Emergency permits for assistant superintendent

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 23. (a) An emergency permit for assistant superintendent issued after July 1, 2004, is valid only for the school year during which it is granted, and expires July 31 of the school year for which it is issued.

(b) To qualify for an emergency permit for assistant superintendent, the applicant must submit the following:

(1) An application for an emergency permit for assistant superintendent submitted by an employing school superintendent.
(2) The established fee for the issuance of the license.
(3) The license being renewed, if applicable.
(4) Any required evidence of the applicant's criminal history, including fingerprints and Social Security number.
(5) All necessary evidence of eligibility.
(6) Any additional documentation as required by law.
(7) Verification of a bachelor's degree from a state or regionally accredited institution.
(8) Verification of a valid proficient practitioner instructional license, a valid standard, provisional, or professional teaching license with two (2) years of full-time teaching experience.
(9) Verification from the employing school superintendent certifying an emergency need for the position of assistant superintendent and that the applicant has been assigned a mentor as defined by the school district.
(10) Verification from the licensing advisor where the program will be completed that the candidate has enrolled in an approved program for assistant superintendent and has a plan for completion of the program as verified by the licensing advisor.
(11) An application for an emergency permit for assistant superintendent must be submitted after July 1 of the school year requested, but no later than twelve (12) weeks after the assistant superintendent begins actual service. The emergency permit for assistant superintendent must be submitted no later than April 15 of the school year requested.

(c) The emergency permit for assistant superintendent may be renewed at the request of the employing school superintendent every year upon completion of six (6) semester hours of course work directed toward an administrator license as an assistant superintendent or verification of appropriate progress by the licensing advisor where the applicant is completing an approved program.

(d) The renewal of an emergency permit for assistant superintendent requires the recommendation of the Indiana licensing advisor at the institution where the course work toward a planned program was completed.

(e) The emergency permit for assistant superintendent may be renewed up to two (2) times.

(f) An applicant may earn a one (1) time nonrenewable emergency permit for continuing education if they can verify that they have not been employed as a full-time or part-time teacher, administrator, or school services personnel, not including a substitute teacher, at any time three (3) years prior to the date of application.

(g) The holder of the emergency permit for assistant superintendent is required to successfully complete all assessments unless they have already been successfully completed.

(h) Upon completion of the requirements, the holder of the emergency permit for assistant superintendent and instruction will be issued an initial practitioner administra-

tor license unless the holder has been issued a proficient practitioner administration license in another position. *(Professional Standards Board; 515 IAC 9-1-23)*

515 IAC 9-1-24 Emergency permits for school counselor
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 24. (a) An emergency permit for school counselor issued after July 1, 2004, is valid only for the school year during which it is granted, and expires July 31 of the school year for which it is issued.

(b) To qualify for an emergency permit for school counselor, the applicant must submit the following:

(1) An application for an emergency permit for school counselor submitted by an employing school superintendent.

(2) The established fee for the issuance of the license.

(3) The license being renewed, if applicable.

(4) Any required evidence of the applicant's criminal history, including fingerprints and Social Security number.

(5) All necessary evidence of eligibility.

(6) Any additional documentation as required by law.

(7) A baccalaureate degree from a state or regionally accredited institution.

(8) Verification from the employing school superintendent certifying an emergency need for the position of school counselor and that the applicant has been assigned a mentor as defined by the school district.

(9) Verification from the licensing advisor where the program will be completed that the candidate has enrolled in an approved program for school counselor and has a plan for completion of the program.

(10) An application for an emergency permit for school counselor must be submitted after July 1 of the school year requested, but no later than twelve (12) weeks after the school counselor begins actual service. The emergency permit for school counselor must be submitted no later than April 15 of the school year requested.

(c) The emergency permit for school counselor may be renewed at the request of the employing school superintendent every year upon completion of six (6) semester hours of course work directed toward an school counselor license or verification of appropriate progress by the licensing advisor where the applicant is completing an approved program.

(d) The renewal of an emergency permit for school counselor requires the recommendation of the Indiana licensing advisor at the institution where the course work toward a planned program was completed.

(e) The emergency permit for school counselor may be renewed up to two (2) times.

(f) An applicant may earn a one (1) time nonrenewable emergency permit for continuing education if they can verify that they have not been employed as a full-time or part-time teacher, administrator, or school services personnel, not including a substitute teacher, at any time three (3) years prior to the date of application.

(g) The holder of the emergency permit for school counselor is required to successfully complete all assessments.

(h) Upon completion of the requirements, the holder of the emergency permit for school counselor will be issued an initial practitioner school services license for school counselor. *(Professional Standards Board; 515 IAC 9-1-24)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 30, 2003 at 10:30 a.m., at the Professional Standards Board office, 101 West Ohio Street, Third Floor, Indianapolis, Indiana the Professional Standards Board will hold a public hearing on proposed new rules to provide certain requirements and procedures for the issuance and revocation of various licenses and permits issued by the professional standards board. Copies of these rules are now on file at the Professional Standards Board, 101 West Ohio Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Marie Theobald
Executive Director
Professional Standards Board

TITLE 610 DEPARTMENT OF LABOR

Proposed Rule
LSA Document #03-36

DIGEST

Amends 610 IAC 4-2-1 to comply with amended federal Occupational Safety and Health Administration requirements for recording and reporting workplace injuries and illnesses for public employees. Repeals 610 IAC 4-2-11. Effective 30 days after filing with the secretary of state.

610 IAC 4-2-1
610 IAC 4-2-11

SECTION 1. 610 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

610 IAC 4-2-1 IOSHA applicable to public sector employers; volunteer fire companies

Authority: IC 22-8-1.1-48.1
Affected: IC 22-8-1.1; IC 36-8-12

Sec. 1. (a) The Indiana occupational safety and health act, IC 22-8-1.1, pertains to and concerns public employment as well as private employment. IC 22-8-1.1 defines employer as, "any individual or type of organization, including the state and all its political subdivisions, which has in its employ one (1) or more individuals". Employee is defined as, "a person permitted to work by an employer in employment".

(b) Therefore, the statute and all promulgated standards, rules and regulations are applicable to public sector as well as private sector employers. Provided, however, that **public employers must comply with** the requirements for reporting and recording occupational injuries and illnesses ~~applicable in the public sector are found in 610 IAC 4-2-11 and not in 610 IAC 4-4.~~ **found in 610 IAC 4-6 without regard to Standard Industrial Classification Code.**

(c) For the ~~purposes~~ **purpose** of the Indiana occupational safety and health act, "Volunteer fire companies", which exist pursuant to IC 36-8-12, shall be deemed public sector employers. *(Department of Labor; Indiana Occupational Safety and Health, Public Employee Program Purpose; filed Apr 5, 1977, 10:16 a.m.: Rules and Regs. 1978, p. 467; filed Sep 9, 1981, 10:15 a.m.: 4 IR 1986; filed Jun 21, 1982, 3:00 p.m.: 5 IR 1607; filed Jan 8, 1986, 2:18 p.m.: 9 IR 999; readopted filed Nov 20, 2001, 2:15 p.m.: 25 IR 1305)*

SECTION 2. 610 IAC 4-2-11 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 22, 2003 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Room W195, Indianapolis, Indiana the Department of Labor will hold a public hearing on proposed new rules governing the regulations for reporting and recording work place injuries and illnesses. Parties interested in participating in the public hearing are invited to attend and submit written statements expressing their concerns, any suggestions, and any documentation that may serve to support, clarify, or supplement their concerns and suggestions. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W195 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Nancy J. Guyott
Commissioner
Department of Labor

TITLE 610 DEPARTMENT OF LABOR

Proposed Rule
LSA Document #03-37

DIGEST

Amends 610 IAC 4-6-11 to comply with amended federal Occupational Safety and Health Administration requirements for recording criteria for cases involving occupational hearing loss. Effective 30 days after filing with the secretary of state.

610 IAC 4-6-11

SECTION 1. 610 IAC 4-6-11, AS ADDED AT 26 IR 361, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

610 IAC 4-6-11 Recording criteria for cases involving occupational hearing loss

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 11. (a) ~~Beginning on January 1, 2003,~~ If an employee's hearing test (audiogram) reveals that a **work related** standard threshold shift (STS) has occurred **in one (1) or both ears, and the employee's total hearing level is twenty-five (25) decibels or more above audiometric zero in the same ear as the STS (averaged at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz),** the employer must record the case on the Occupational Safety and Health Administration (OSHA) 300 Log. ~~by checking the "hearing loss" column.~~

(b) ~~Beginning on January 1, 2003,~~ Implementation of this section shall be as follows:

(1) As used in this rule, "STS" has the meaning as set forth in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the ~~most recent~~ **baseline** audiogram ~~for that employee,~~ of an average of ten (10) decibels or more at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz in one (1) or both ears.

(2) **Employers shall evaluate the current audiogram to determine whether an employee has an STS and a twenty-five (25) decibels hearing level as follows:**

(A) If the employee has never previously experienced a recordable hearing loss, the employer must compare the employee's current audiogram with that employee's baseline audiogram. If the employee has previously experienced a recordable hearing loss, the employer must compare the employee's current audiogram with the employee's revised baseline audiogram (the audiogram reflecting the employee's previous recordable hearing loss case).

(B) Audiometric test results reflect the employee's overall hearing ability in comparison to audiometric

zero. Therefore, using the employee's current audiogram, the employer must use the average hearing level at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz to determine whether or not the employee's total hearing level is twenty-five (25) decibels or more.

(3) When comparing audiogram results, the employer may adjust the results for the employee's age when the audiogram was taken using Table F-1 or F-2, as appropriate, in Appendix F of 29 CFR 1910.95. **The employer may not use an age adjustment when determining whether the employee's total hearing level is twenty-five (25) decibels or more above audiometric zero.**

(4) If the employer retests the employee's hearing within thirty (30) days of the first test, and the retest does not confirm the **recordable** STS, the employer is not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the STS, the employer must record the hearing loss illness within seven (7) calendar days of the retest. **If subsequent audiometric testing performed under the testing requirements of the noise standard indicates that an STS is not persistent, the employer may erase or strike out the recorded entry.**

(5) Hearing loss is presumed to be work related if ~~the employee is exposed to noise in the workplace at an eight (8) hour time-weighted average of eighty-five (85) decibels or greater, or to a total noise dose of fifty percent (50%), as defined in 29 CFR 1910.95. For hearing loss cases where the employee is not exposed to this level of noise, the employer~~ **an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a preexisting hearing loss. Employers** must use the ~~criteria~~ **rules contained** in section 6 of this rule to determine ~~if the~~ **whether** hearing loss is work related.

(6) If a physician or other licensed health care professional determines that the hearing loss is not work related or has not been significantly aggravated by occupational noise exposure, the employer is not required to consider the case work related or to record the case on the OSHA 300 Log.

(7) Employers must check the 300 Log column for hearing loss when entering a recordable hearing loss case on the OSHA 300 Log.

~~(c) Until December 31, 2002, employers are required to record a work related hearing loss averaging twenty-five (25) decibels or more at two thousand (2,000), three thousand (3,000), and four thousand (4,000) hertz in either ear on the OSHA 300 Log. When comparing audiogram results, the employer must use the employee's original baseline audiogram for comparison. The employer may make a correction for presbycusis (aging) by using the tables in Appendix F of 29 CFR 1910.95.~~ *(Department of Labor; 610 IAC 4-6-11; filed Sep 26, 2002, 11:22 a.m.: 26 IR 361)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 22, 2003 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W195, Indianapolis, Indiana the Department of Labor will hold a public hearing on proposed new rules governing the regulations for reporting and recording work place injuries and illnesses. Parties interested in participating in the public hearing are invited to attend and submit written statements expressing their concerns, any suggestions, and any documentation that may serve to support, clarify, or supplement their concerns and suggestions. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W195 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Nancy J. Guyott
Commissioner
Department of Labor

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

Proposed Rule
LSA Document #02-213

DIGEST

Amends 872 IAC 1-1-6.1 to establish that credit hours taken to comply with the educational requirements in IC 25-2.1-3-2 cannot be duplicated. Amends 872 IAC 1-1-12 to revise the examination used for accounting practitioners to comply with IC 25-2.1-6-1. Amends 872 IAC 1-3-14 to establish that continuing professional education hours obtained to renew a lapsed certificate cannot be double counted by using the hours for credit for renewal at the end of the reporting period. Adds 872 IAC 1-5 to establish the requirements for substantial equivalency. Effective 30 days after filing with the secretary of state.

872 IAC 1-1-6.1 **872 IAC 1-3-14**
872 IAC 1-1-12 **872 IAC 1-5**

SECTION 1. 872 IAC 1-1-6.1 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-6.1 Educational requirements
Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-3-2; IC 25-2.1-6

Sec. 6.1. **(a)** Compliance with IC 25-2.1-3-2, regarding educational requirements for first time examination applicants, will be met by obtaining at least one hundred fifty (150) semester hours of college education, including a baccalaureate

or higher degree from an accredited college or university. As part of the one hundred fifty (150) semester hours, an applicant must meet any one (1) of the following conditions:

(1) Earned a graduate degree from a college or university that is accredited by an accrediting organization as included in section 6.3 of this rule, and completed **at least twenty-four (24) semester hours in:**

(A) ~~at least twenty-four (24) semester hours in~~ accounting at the undergraduate level or fifteen (15) semester hours in accounting at the graduate level; and

(B) ~~at least twenty-four (24) semester hours in~~ business administration and economics courses, other than accounting courses, at the undergraduate or graduate level.

The business administration courses may include up to six (6) hours of business and tax law courses and up to six (6) hours of computer science courses. The accounting hours must include courses covering the subjects of financial accounting, auditing, taxation, and managerial accounting. If the accounting hours are a mixture of graduate and undergraduate hours, the higher number of required hours applies.

(2) Earned a baccalaureate degree from a college or university that is accredited by an accrediting organization as included in section 6.3 of this rule, and completed **at least twenty-four (24) semester hours in:**

(A) ~~at least twenty-four (24) semester hours in~~ accounting at the undergraduate or graduate level, including courses covering the subjects of financial accounting, auditing, taxation, and managerial accounting; and

(B) ~~at least twenty-four (24) semester hours in~~ business administration and economics courses other than accounting courses.

The business administration courses may include up to six (6) hours of business and tax law courses and up to six (6) hours of computer science courses.

(b) College courses with substantial duplication of content may be counted only one (1) time toward the requirements in IC 25-2.1-3-2 and this section. *(Indiana Board of Accountancy; 872 IAC 1-1-6.1; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3933; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Aug 3, 2001, 4:34 p.m.: 24 IR 3989)*

SECTION 2. 872 IAC 1-1-12 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-12 Contents of examinations; grading

Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-3; IC 25-2.1-6-1

Sec. 12. (a) As the examination for certified public accountant applicants, the board or the board's designee shall use the Uniform CPA examination ~~which~~ **that** is given in May and November of each calendar year and prepared by the AICPA under a plan of cooperation with the boards of all states and territories of the United States. The examination consists of the following parts:

(1) Auditing.

(2) Business law and professional responsibilities.

(3) Financial accounting and reporting.

(4) Accounting and reporting–taxation, managerial and governmental, and not-for-profit organizations.

(b) The board or the board's designee shall use the Advisory Grading Service provided by the AICPA under a plan of cooperation with the boards of all states and territories of the United States to assist it in performing its duties under IC 25-2.1.

(c) A passing grade of seventy-five percent (75%) or more for each subject is required.

(d) For ~~the~~ purposes of section 19 of this rule, for conditioned candidates reexamination requirements, those applicants who prior to the May 1994 examination had credit for **passing:**

(1) ~~passing~~ auditing shall have credit for auditing;

(2) ~~passing~~ commercial law shall have credit for passing business law and professional responsibilities;

(3) ~~passing~~ theory of accounts shall have credit for passing financial accounting and reporting; and

(4) ~~passing~~ accounting practice (two (2) parts) shall have credit for passing accounting and reporting.

(e) As the examination for accounting practitioners, the board or the board's designee shall use ~~the Accounting and Reporting section~~ **sections** of the Uniform CPA examination ~~given in May and November of each calendar year and prepared by the AICPA.~~ **as provided for in this subsection. An individual with a two (2) year associate degree under IC 25-2.1-6-1(a)(3)(A) shall take the financial accounting and reporting and the accounting and reporting sections of the Uniform CPA examination. An individual with a baccalaureate degree under IC 25-2.1-6-1(a)(3)(B) shall take only the financial accounting and reporting section of the Uniform CPA examination.**

(f) The board or the board's designee may also make use of the Advisory Grading Service provided by the AICPA to assist in performing its duties under IC 25-2.1. A passing grade of seventy-five percent (75%) or more is required. *(Indiana Board of Accountancy; Rule 69-1, 12; filed Jun 30, 1978, 9:54 a.m.: 1 IR 397; filed May 1, 1984, 12:50 p.m.: 7 IR 1540; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1034; filed Aug 28, 1986, 3:20 p.m.: 10 IR 66; filed Apr 5, 1994, 3:30 p.m.: 17 IR 1888; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824)*

SECTION 3. 872 IAC 1-3-14 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-3-14 Reactivation of lapsed certificate

Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-4-5

Sec. 14. (a) An individual whose certificate has lapsed for

more than eighteen (18) months who wishes to reenter the practice of accountancy must file an application to renew the lapsed certificate. An individual whose certificate has lapsed for eighteen (18) months or less is governed by section 17 of this rule.

(b) The application shall be accompanied by the following:
(1) A statement of the licensee's employment activity for the previous twenty-four (24) months.
(2) The payment of the fee for a triennial permit specified in 872 IAC 1-1-10.
(3) Evidence of the completion of the CPE hours required by subsection (c).

(c) In order to reenter the practice of public accountancy and receive a certificate under this section, a licensee shall complete one hundred twenty (120) CPE hours prior to filing the application.

(d) The CPE hours required under subsection (c) must:
(1) have been obtained no earlier than three (3) years prior to the date the application for reentry is filed; and
(2) meet the requirements established in sections 3 through 5 of this rule *[872 IAC 1-3-5 was repealed filed Feb 21, 2000, 7:06 a.m.: 23 IR 1655.]*.

For purposes of this section, the reporting period referenced in section 5 of this rule *[872 IAC 1-3-5 was repealed filed Feb 21, 2000, 7:06 a.m.: 23 IR 1655.]* shall be the period described in subdivision (1).

(e) CPE hours obtained by a certificate holder to renew a lapsed certificate under this section cannot be double counted by also using them for credit in the reporting period in progress for renewal of the license at the end of the reporting period. The CPE requirements for the reporting period in progress at the time of reactivation are stated in section 16 of this rule. *(Indiana Board of Accountancy; 872 IAC 1-3-14; filed May 17, 1988, 3:15 p.m.: 11 IR 3569, eff Jul 1, 1988; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2351; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3937; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824)*

SECTION 4. 872 IAC 1-5 IS ADDED TO READ AS FOLLOWS:

Rule 5. Substantial Equivalency

872 IAC 1-5-1 Certification or permit not required for CPA certificate holders from other states; substantial equivalency

Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-3; IC 25-2.1-4-10

Sec. 1. (a) Any out-of-state CPA certificate holder, whose principal place of business is not in Indiana, exercising the privileges under IC 25-2.1-4-10 shall submit to the board, prior to practicing in Indiana, a notice of intent to practice accountancy in Indiana, including all of the following:
(1) The individual's name, address of the principal place of business, and certificate number.
(2) A certification of the CPA's certificate of registration from the jurisdiction that issued the certificate.
(3) The name, address, and firm permit number, if any, of the firm with which the individual CPA practices.

(b) An individual exercising the privileges under IC 25-2.1-4-10 shall renew with the board his or her notice of intent no later that January 2 of each year by submitting the information required in subsection (a).

(c) The notice of intent shall be amended within thirty (30) days after the individual changes his or her principal place of business or within thirty (30) days after the out-of-state certificate of registration has been denied, revoked, or suspended in any jurisdiction.

(d) An individual who previously exercised the privileges under IC 25-2.1-4-10 but no longer holds a valid certificate of registration in another state or whose principal place of business becomes in Indiana may no longer exercise those privileges without obtaining an Indiana CPA certificate. *(Indiana Board of Accountancy; 872 IAC 1-5-1)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 16, 2003 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 6, Indianapolis, Indiana the Indiana Board of Accountancy will hold a public hearing on proposed amendments to establish that credit hours taken to comply with the educational requirements in IC 25-2.1-3-2 cannot be duplicated, to revise the examination used for accounting practitioners to comply with IC 25-2.1-6-1, to establish that continuing professional education hours obtained to renew a lapsed certificate cannot be double counted by using the hours for credit for renewal at the end of the reporting period, and to establish the requirements for substantial equivalency. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Indiana Professional Licensing Agency

Indiana Register

Intent to Readopt Rules

TITLE 210 DEPARTMENT OF CORRECTION

Notice of Intent
LSA Document #03-54

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state

OVERVIEW: Rule to be readopted without change is as follows:

210 IAC 7 OFFENDER HEALTH CARE CO-PAYMENT PROCEDURES

Questions or comments on the readoption may be directed by mail to the Department of Correction, ATTENTION: Diane Mains, Indiana Government Center-South, 302 West Washington Street, Room 334 Indianapolis, Indiana 46204 or by electronic mail to visitors@coa.doc.state.in.us. Statutory authority: IC 11-10-3-5(e).

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Notice of Intent
LSA Document #03-56

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state

OVERVIEW: Rules to be readopted without changes are as follows:

511 IAC 1-6-2 Transfer at request of parents or student
511 IAC 1-6-3 Determination of better accommodation
511 IAC 1-6-4 Relation to state board rule on special education
511 IAC 4-4-3 Organization; cooperative agreement
511 IAC 4-4-4 Membership; participation; services to nonpublic educational units
511 IAC 5-1-1 Definitions
511 IAC 5-1-3 Authority to grant diploma
511 IAC 5-1-4 Testing centers and procedures
511 IAC 5-1-4.5 Time limit
511 IAC 5-3-1 Definitions
511 IAC 5-3-2 Completion of Core 40
511 IAC 6-7-2 Minimum standards; academic honors diploma
511 IAC 6-7-4 Semester requirements; waiver
511 IAC 6-7-7 Correspondence courses; credit
511 IAC 6-8-1 Definitions
511 IAC 6-8-2 Waiver to implement nonstandard courses and curriculum programs
511 IAC 6-8-3 Application procedures; implementation of proposed courses or programs
511 IAC 6-8-5 Relationship with performance-based accreditation
511 IAC 6-8-6 Appeal to the board
511 IAC 6.1-5-3.5 Middle level curriculum

Questions or comments on the readoption may be directed by mail to Mr. Jeffery P. Zaring, State Board Administrator, Indiana Department of Education, Room 229 State House, Indianapolis Indiana 46202 or by electronic mail to jzaring@doe.state.in.us. Statutory authority: IC 20-8.1-6.1-11; IC 20-1-1-6; IC 20-1-11.3-1; IC 20-10.1-12.1-3; IC 20-10.1-16-10; IC 20-1-1.2-18.

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

Notice of Intent
LSA Document #03-55

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

OVERVIEW: Rules to be readopted without changes are as follows:

830 IAC 1-1 Dietitians; Certification
830 IAC 1-2-1 Application procedures and qualifications
830 IAC 1-2-2 Replacement of certificates
830 IAC 1-2-3 Education and training
830 IAC 1-2-4 Certification renewal
830 IAC 1-2-5 Abandoned application
830 IAC 1-3 Reciprocity
830 IAC 1-4 Fees
830 IAC 1-5 Code of Ethics

Questions or comments on the readoption may be directed by mail to the Indiana Dietitian Certification Board, Health Professions Bureau, 402 West Washington Street, Room W041, Indianapolis, Indiana 46204 or by electronic mail to krkelley@hpb.state.in.us. Statutory authority: IC 25-14.5-2-5.

TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

Notice of Intent
LSA Document #03-77

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

OVERVIEW: Rules to be readopted without changes are as follows:

888 IAC 1.1-10-1	Continuing education requirements for veterinarians and veterinary technicians
888 IAC 1.1-10-2	Continuing education reporting
888 IAC 1.1-10-3	Application for approval
888 IAC 1.1-10-4	Standards for approval

Questions or comments on the readoption may be directed by mail to the Indiana Board of Veterinary Medical Examiners, Health Professions Bureau, 402 West Washington Street, Room W041, Indianapolis, Indiana 46204 or by electronic mail to cvaught@hpb.state.in.us. Statutory authority: IC 15-5-1.1-8(f).

60 Day Requirement (IC 4-22-2-19)

TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #02-40

February 25, 2003

Chairman
Administrative Rules Oversight Committee
c/o George Angelone
Legislative Services Agency

RE: LSA Doc. #02-40(F)
45 IAC 18 (CHARITY GAMING)
Notice of Adoption of Rules under IC 4-32-7-3

Dear Sir or Madam:

The Indiana Department of Revenue adopted rules that took effect in 1993 implementing IC 4-32 concerning charity gaming by Indiana qualified organizations. Pursuant to IC 4-22-2-19(c), we are notifying the Administrative Rules Oversight Committee that the Department instituted further rulemaking (LSA Doc. #02-40(F)) more than sixty (60) days after the 1992 effective date of the statute.

The Department subsequently determined, based on ten (10) years of regulating charity gaming, that it is necessary to add rules modifying the existing administrative code provisions on many topics to better inform and protect the citizens of Indiana. Such topics include administrative procedures, hearing provisions, accounting rules, record keeping requirements to name a few.

Furthermore, the Department finds it appropriate to add rules clarifying membership in an organization for auxiliary members and out of state members.

If you have further questions, please contact me at your convenience.

Sincerely,

Kenneth L. Miller,
Commissioner

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #02-210

February 25, 2003

Chairman
c/o George Angelone
Administrative Rules Oversight Committee
302 Statehouse
Indianapolis, In 46204

Subject: 460 IAC 7; LSA Doc. #02-210

Dear Chairman:

The Division of Disability, Aging, and Rehabilitative Services is adopting rules to establish standards and requirements for individualized support plans for eligible individuals with a developmental disability. These rules will formalize standards that have been practice in the division.

Statutory authority for adoption of these rules has been in place for many years. Under IC 4-22-2-19, promulgation of rules require beginning the rulemaking process within 60 days of the enactment of such statutory authority unless an exception applies. The rulemaking process did not begin for these rules within the 60 day requirement.

Under IC 4-22-2-19(a)(3) an exception is provided for rules required by statutes enacted before June 30, 1995. IC 12-11-1.1-9 was added by P.L.272-1999 but this was a recodification of P.L.2-1992 in a similar form. Our proposed rule falls under the exception in IC 4-22-2-19(a)(3). Although IC 12-11-1.1-9 was added by P.L.272-1999, it existed in similar form in IC 12-11-1, which was added by P.L.2-1992 and repealed by P.L.272-1999.

The division is providing this written notification to the committee to explain why this rule does not comply with the timeframe specified in IC 4-22-2-19(c)(1). In the case of this rule, we could not comply with the statute that authorized the rule because this statute was enacted 10 years ago.

If you need additional information, please contact Jean Oswalt at (317) 232-1161.

Sincerely yours,

Steve Cook, Director
Division of Disability, Aging, and Rehabilitative Services

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#03-67(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING NEW SOURCE REVIEW RULES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amending state air permit rules in response to the amendments to the U.S. EPA's New Source Review rules that were published in the Federal Register (67 FR 80186) on December 31, 2002. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 2.

AUTHORITY: IC 13-14-8; IC 13-17-3.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose

The purpose of the changes in the federal revisions to the New Source Review rules published on December 31, 2002, is to provide new methods of determining applicability for existing major sources. This first notice discusses the background for this program and identifies alternatives to be considered for implementing changes at the state level.

Background of Federal Rules

On December 31, 2002, the United States Environmental Protection Agency (U.S. EPA) published a final rule concerning regulations governing New Source Review (NSR) programs mandated by parts C and D of Title I of the Clean Air Act (CAA). U.S. EPA stated that these revisions "are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the program and, in certain respects, resulting in greater environmental protection" (67 FR 80186, December 31, 2002). The applicability of the permit program is based on whether a modification to a source results in an increase in emissions above certain amounts. The December 31, 2002, rules change the method for determining the magnitude of the change in emissions. These changes include baseline emissions determinations, and an actual-to-projected-actual methodology. The new rules also provide optional applicability tests for sources that have accepted plantwide applicability limitations (PALs), sources that have designated clean units, and sources engaging in pollution control projects (PCPs). The December 31, 2002, rules revised amendments that were originally proposed in the July 23, 1996, Federal Register. More information regarding the background of the regulations is provided in the December 31, 2002, Federal Register notice.

Part C of Title I of the CAA requires states to include in their state implementation plan (SIP), emission limitations and other measures that are necessary to prevent significant deterioration of the air quality in each region designated as attainment or unclassifiable. Section 51.166 of Title 40 of the Code of Federal Regulations (40 CFR 51.166) contains the specific minimum requirements for a PSD program. The PSD program is a preconstruction review program that requires review of major new sources of air pollution emissions and major modifications of existing sources located in attainment areas where air quality meets health based standards. If a state does not have a PSD program as an approved part of its SIP, a state may be delegated the authority to implement and enforce the federal PSD program contained in 40 CFR 52.21.

Similar to the PSD program, Part D of Title I of the CAA requires states to include in their SIP provisions to require preconstruction permits for construction and operation of new or modified major sources located in nonattainment areas. Section 51.165 of Title 40 of the Code of Federal Regulations (40 CFR 51.165) and Appendix S of 40 CFR Part 51 contain the specific minimum requirements for a nonattainment new source review program. If a state does not have a nonattainment new source review program as an approved part of its SIP, a state may be delegated the authority to implement and enforce the federal nonattainment new source review program contained in 40 CFR 52.24.

The December 31, 2002, rule revisions require states with approved SIPs to adopt the federal NSR reform amendments no later than January 2, 2006. States that have been delegated the authority to implement the federal rules are to implement the federal NSR reform amendments no later than March 3, 2003.

Ten northeastern states have filed a lawsuit in the D.C. Circuit Court challenging the final NSR rules. The states have also filed a motion to stay the final NSR rule revisions. These states claim that a stay of the rules is warranted because the states are likely to prevail in court when the case challenging the rules is heard and because states will suffer irreparable harm if the new rules take effect on March 3, 2003. They also assert that states would be harmed due to increased pollution and due to confusion created if the new rules are implemented and later overturned by the court. This legal action may have an impact on Indiana's rulemaking effort.

Background of State Rules

Since September 30, 1980, IDEM has been U.S. EPA's delegated authority for implementation of the federal PSD program in Indiana. Beginning in 1999, Indiana conducted state rulemakings to update and correct the state PSD rule at 326 IAC 2-2 such that the rule could be submitted to U.S. EPA and approved into the SIP. After working informally with U.S. EPA Region V during the state rulemakings, Indiana submitted the updated and corrected PSD rule to U.S. EPA on February 1, 2002, for approval into the SIP. After a formal review, the U.S. EPA published a notice in the March 3, 2003, Federal Register informing the public that U.S. EPA conditionally approved, as a revision to the Indiana State Implementation Plan (SIP), the Prevention of Significant Deterioration (PSD) rules submitted by Indiana. This approval goes into effect on April 2, 2003, at which time the state PSD rule at 326 IAC 2-2 will be federally enforceable under the CAA. This will mean that the PSD program will be implemented by Indiana using the state rules in an approved SIP instead of a delegated federal program. As a condition of the approval, Indiana will have to make the corrections to the state rule that U.S. EPA specified in the notice within one (1) year of the effective date of the federal rule.

A notice under IC 13-14-9-7 is published in this Indiana Register to address the deficiency identified by U.S. EPA in the conditional approval of Indiana's PSD program at the same time as this rulemaking to address the NSR revisions. The deficiency must be corrected within one year of the effective date of the conditional approval (April 2, 2003), or U.S. EPA will initiate withdrawal of federal approval of the PSD rules into the SIP. These two rule actions are completely independent of each other.

Having SIP approval means that Indiana's PSD permits are subject to the same procedure as all other Indiana air permits, including those for new or modified major sources in nonattainment areas and minor

new source review anywhere in the state. Draft permits are subject to public review and comments by any affected party, including the U.S. EPA. Indiana's administrative and judicial review process is available to rule on objections to final permit decisions.

The NSR rule amendments will be submitted to U.S. EPA for approval as an amendment to the SIP upon promulgation.

Applicable Federal Law

The Clean Air Act (CAA) mandates a new source review program for major sources of air pollution in parts C and D of Title I. This mandate is located in two (2) programs in the CAA: NSR PSD (part C) and NSR for Nonattainment areas (part D). The purpose of parts C and D is to protect human health and welfare from any actual or potential adverse effects from air pollutants. It also preserves the air quality in national parks, ensures economic growth will occur in a manner consistent with the preservation of existing clean air resources, and provides for careful evaluation of the consequences of permitting decisions both in Indiana and other states.

IDEM recognizes that the minimum elements of the new source review programs for major sources are established by the federal CAA and by federal regulations. Therefore, these requirements are expected to be generally consistent across the country. Nonetheless, it is not unusual for states to adopt rules that contain provisions that are more strict than the minimum federal requirements or contain additional provisions that meld the federally-mandated program with existing state programs. Indiana has longstanding provisions that are more strict with respect to maximum allowable increases under the PSD rules. In addition, even after the 1990 amendments to the federal Clean Air Act removed the mandate, Indiana has maintained the authority to regulate certain hazardous air pollutants (including mercury) under PSD.

U.S. EPA, through 67 FR 80186, developed new NSR language regarding applicability at existing major sources. The state, according to 67 FR 80241, must develop or adopt rules in accordance with U.S. EPA's new rules by January 2, 2006. However, according to the CAA section 116 (42 U.S.C. 7416) Indiana may adopt or enforce, "(1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution [but] such state... may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." Therefore, Indiana may adopt its own version of the NSR rules to comply with 67 FR 80241 as long as Indiana's rules are at least as stringent as U.S. EPA's NSR reform rules. U.S. EPA has been asked for clarification on a number of provisions in the new federal NSR rules. Until they are able to provide responses, it is not clear what deviations from the federal language will be acceptable to U.S. EPA.

Alternatives To Be Considered Within the Rulemaking

This rulemaking will consider modifications to Title 326 concerning changes to the NSR rules. There are a variety of options to be considered concerning the federal NSR rules (67 FR 80241). Indiana could:

1. Adopt the federal requirements as:
   (a) an incorporation by reference; or
   (b) full-text into the state rules.

   Either option would require some adjustments to the rule language to implement because the federal rules do not fit into the structure of the state rules.
2. Take no action to adopt the federal rules.
3. Adopt certain parts, but not all of the federal rules.
4. Adopt some or all of the federal rules with changes to address specific concerns in Indiana.

Within the major topics of the new federal rules, the IDEM has identified a number of options to be considered for adoption into the state rules:

Applicability Test for Existing Sources

The new rule makes two changes to the existing NSR regulations that will affect how to calculate emission increases to determine whether physical changes or changes in the method of operation trigger the major NSR requirements. First, there is a new procedure for determining "baseline actual emissions". The relevant terminology for calculating pre-change emissions for most applications will now be "baseline actual emissions" rather than "actual emissions". Any consecutive 24-month period in the past ten (10) years can be used to determine baseline actual emissions. Second, the existing actual-to-potential applicability test for determining if a physical or operational change at an existing emission unit will result in an emissions increase is being supplemented with an actual-to-projected-actual applicability test. The previous "past actual to future potential" method almost always resulted in a determination of a greater emissions increase.

Examples of the types of changes that are open to consideration include: changes to definitions contained in the final regulations; applicability of the actual-to-projected-actual test; notification requirements prior to making changes; downward adjustments to the determination of baseline actual emissions and projected actual emissions; data requirements for establishing the look back period; enforceable limitations on projected actual emissions; requirements for tracking post-change emissions, netting requirements; and reporting and record keeping requirements.

IDEM seeks comment on these and any other alternatives for applicability tests for existing sources.

Plantwide Applicability Limitations (PALs)

The new rules promulgate plantwide applicability limitations (PAL) based on actual emissions. If the owner of a source elects to establish a plantwide actual emissions cap, then the new regulations will make the major NSR rules not applicable to new or modified emissions units. In return for this flexibility, emissions from all emission units under the PAL must be rigorously monitored to ensure that the emission cap is not exceeded. A PAL offers flexibility and regulatory certainty. In order to take full advantage of a PAL, sources will need to keep emissions well below the cap.

Currently, there are state regulations in 326 IAC 2-1.1-12 that address facility wide emission caps in operating permits. The state rule was submitted to U.S. EPA as a revision to the minor NSR SIP on February 3, 1999, but has not yet been approved. Under the new Federal requirements, 326 IAC 2-1.1-12 would need to be repealed and replaced with the PAL provisions from 40 CFR 52.21(aa) in the major new source review program.

Examples of the types of changes that are open to consideration include: limiting the pollutants and source categories applicable to PALs; permit application requirements for obtaining a PAL; determination of a PAL level; effective period of a PAL; PAL termination and renewal requirements; PAL increases and adjustments; PAL elimination of previous enforceable permit limits; PAL testing, monitoring, reporting, and record keeping requirements. IDEM also notes that the types of agency review of PALs may be resource-intensive and are comparable to the types of site-specific review fees currently included in the existing PSD regulation for other site-specific reviews. Therefore, IDEM is soliciting comment on an alternative where an appropriate site-specific fee adjustment is made to fees in 326 IAC 2-1.1-7 to address specific resource needs for proposed PALs. Such a site-specific fee could be based on a flat fee approach, an approach based on the number of significant emissions units or number of pollutants involved, or other means.

IDEM seeks comment on these and any other alternatives for plantwide applicability limitations.

Clean Unit Designation

The federal regulations under 40 CFR §51.165 and 40 CFR §51.166 provide a new type of applicability test for emissions units designated as Clean Units. An emissions unit automatically qualifies as a Clean Unit, and qualifies to use the Clean Unit applicability test, if it has gone through a major NSR permitting review and is complying with best available control technology (BACT) or lowest achievable emission rate (LAER), which includes installation and operation of state-of-the-art emissions control technologies (add-on control, pollution prevention and work practices). Conversely, if the emissions unit has not gone through a major NSR permitting review, but has installed and operates state-of-the-art emissions control technologies (add-on control, pollution prevention and work practices), then it does not automatically qualify, but it can still qualify for Clean Unit status. These emissions units must first go through a SIP-approved permitting process that includes a process for determining whether the emissions unit meets the criteria to be designated as a Clean Unit. This process must include public notice and opportunity for public comment.

To obtain Clean Unit status and qualify for the Clean Unit applicability test using a SIP-approved permitting process, a two-part test must be used. The air pollution control technology which includes pollution prevention or work practices, must be comparable to BACT or LAER and must demonstrate that the allowable emissions will not cause or contribute to a NAAQS or PSD increment violation, or adversely impact an air quality related value (AQRV), such as visibility, that has been identified for a Federal Class I area. The owner and operator may make a showing that the air pollution control technology, which includes pollution prevention or work practices, is comparable to BACT/LAER in two ways: (1) by comparing the emissions unit's control level to BACT/LAER determinations for similar sources in the RACT/BACT/LAER Clearinghouse (RBLC); or (2) by making a case-by-case demonstration that the emissions control is "substantially as effective" as BACT or LAER. There are different criteria to determine Clean Unit status for sources located in non-attainment and attainment areas. The methodologies for determining clean unit status in both attainment and nonattainment areas are somewhat different than the respective methods for determining BACT and LAER.

The effective date of the Clean Unit designation varies with the permitting situation and actual construction and operation of the control technologies. The Clean Unit designation is valid for a period up to ten (10) years from the effective date of the designation. Once an emissions unit qualifies as a Clean Unit, it is subject to an alternative major NSR applicability test for calculating emissions increases for subsequent changes. For Clean Units, the owner or operator first determines whether a project causes the need to change the emission limitations or work practice requirements in the permit that were established in conjunction with BACT, LAER, or Clean Unit determinations and any physical or operational characteristics that formed the basis for the BACT, LAER, or Clean Unit determination for a particular unit. If it does, Clean Unit status is lost, and the project is subject to the applicability requirements as if the emissions unit was never a Clean Unit. If the project does not cause the need to change the emission limitations or work practice requirements in the permit that were established in conjunction with BACT, LAER, or Clean Unit determinations and any physical or operational characteristics that formed the basis for the BACT, LAER, or Clean Unit determination for a particular unit, then the emissions unit maintains Clean Unit status, and no emissions increase from the Clean Unit is deemed to occur from the project for the purposes of major NSR.

Examples of the types of changes that are open to consideration include: alternatives to the time period for retroactive clean unit designations; revisions to the comparability analysis for state-of-the art control technologies with retroactive BACT or LAER determinations in attainment or non attainment areas as the case may be; identifying what constitutes a physical or operational characteristic; possible changes to the minor NSR requirements in 326 IAC 2-7-10.5 to provide a mechanism for approving clean unit designations; and clarifying how to account for clean units when determining whether other changes at a source are subject to NSR. IDEM also notes that the types of agency review of clean unit designations may be resource-intensive and are comparable to the types of site-specific review fees currently included in the existing PSD regulation for other site-specific reviews. Therefore, IDEM is soliciting comment on an alternative where an appropriate site-specific fee adjustment is made to fees in 326 IAC 2-1.1-7 to address specific resource needs for making clean unit designations. Such a site-specific fee could be based on a flat fee approach, an approach based on the number of significant emissions units or number of pollutants involved, or other means.

IDEM seeks comment on these and any other alternatives for clean unit designations.

Pollution Control Projects

In the new rules, U.S. EPA extended the current pollution control project (PCP) exclusion for existing electric utility steam generating units to existing units that are not electric utility steam generating units by codifying and slightly revising the concepts from the July 1, 1994 guidance, "Pollution Control Projects and New Source Review (NSR) Applicability". U.S. EPA designated a list of projects that will be considered presumptively environmentally beneficial. If a source constructs a project on that list that would otherwise be subject to major new source review (i.e., due to a significant increase in collateral emissions), a source may be excluded from the major new source review requirements by providing notice to the permitting authority prior to construction. If a source plans to construct a PCP that is not on that list, the source must submit an application to the permitting authority prior to construction. The permitting authority will review the application and determine if the project is environmentally beneficial. The permitting authority's determination will be included in a permit and subject to review by the U.S. EPA and the public prior to issuance. In either case, a PCP must meet specified criteria to ensure that collateral emissions are minimized and that the construction of a PCP will not cause or contribute to a violation of any national ambient air quality standard (NAAQS) or PSD increment or adversely impact an air quality related value for a Federal Class I area.

IDEM understands the benefits of an exclusion for PCPs and currently implements PCP exclusions in the current state major new source review rules for electric utility steam generating units at 326 IAC 2-2-1(x)(2)(H) and 326 IAC 2-3-1(s)(2)(H), and units that are not electric utility steam generating units at 326 2-2.5. The major differences between the current state exclusions and the new federal exclusions are:

- A significant source modification approval is required prior to using the PCP exclusion to construct a PCP in all cases in the state rules.
- A list of projects presumed to be environmentally beneficial is not included in the state rules.
- Emission offsets are required for PCPs that result in a collateral increase of a pollutant in an area that is designated nonattainment for that pollutant.
- The state exclusions for units that are not electric utility steam generating units are not approved portions of the SIP, and rely on a July 1, 1994, U.S. EPA guidance memo rather than a federal rule.

Examples of the types of changes that are open for consideration include: modifying the list of projects presumed to be environmentally beneficial; including a minor new source review permitting require-

ment instead of a notification requirement for a listed project; including an air quality analysis as a mandatory application requirement; requiring emission offsets for a collateral increase of a pollutant for which an area is designated nonattainment; requiring an affidavit of construction for a PCP to ensure that it is properly installed; including more restrictions on the generation of emission reduction credits by a PCP; and including provisions for the removal of a PCP.

IDEM seeks comment on these and any other alternatives for pollution control projects.

Other alternatives identified during this rulemaking will also be considered. The IDEM will work closely with the U.S. EPA and the Air Pollution Control Board to ensure that alternative language satisfies the federal criteria for being approved into the SIP.

If you have questions about the alternatives discussed in this notice, please contact Stacey Pfeffer, Permit Branch, Office of Air Quality at (317) 233-2628 or (800) 451-6027 (in Indiana), or at spfeffer@dem.state.in.us.

Rulemaking Public Meeting Information

IDEM has begun to meet with interested parties to discuss adoption of new NSR requirements. A public meeting was held on March 6, 2003. The minutes from this meeting, any future meetings, and other information regarding this rulemaking can be viewed at IDEM's Air Permit Program Web site at http://www.IN.gov/idem/air/permits/. The alternatives listed in this notice were briefly discussed at the March 6, 2003 meeting. Future public meetings will be posted to the website. IDEM will continue to work with all interested parties throughout this rulemaking process.

If you wish to be notified of future meetings, please contact Chris Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana), or at cpederse@dem.state.in.us.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as the case may be.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#03-67(APCB) NSR Changes
Chris Pedersen
c/o Rules Section Administrative Assistant
Rule Development Section
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the 10th floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 1, 2003.

Additional information regarding this action may be obtained from Chris Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS
301 State House
(317) 232-9855
ADMINISTRATIVE RULE
FISCAL IMPACT STATEMENT

PROPOSED RULE: LSA #02-54
DATE PREPARED: Mar 3, 2003
STATE AGENCY: Department of Environmental Management
DATE RECEIVED: Feb 28, 2003
FISCAL ANALYST: Bernadette Bartlett
PHONE NUMBER: 317-232-9586
Digest of Proposed Rule: This rule amends 326 IAC 10-3-1 to delete emission limits for Ispat Inland in Lake County. It also amends 326 IAC 10-4 to change compliance dates, amend emission trading allowances, and add formulas for efficiency programs. The effective date is 30 days after filing with the Secretary of State. This rule also affects Purdue University.
Governmental Entities: See below.
Regulated Entities: This rule affects emissions from two sources that are already subject to regulation: Ispat Inland in Lake County and Purdue University.

Under current rules, Ispat Inland's emissions from some units are controlled under 326 IAC 10-3, which regulates blast furnace gas-fired boilers, while emissions from other units are controlled by 326 IAC 10-4, the emissions trading program. Ispat Inland requested to have the emission limits for all of their boilers moved into the emissions trading program. This rulemaking moves Ispat Inland's blast furnace gas-fired boilers from being subject to flat emission limitations to participation in the emissions trading program. This change will require the company to install and operate continuous emissions monitors (CEMs).

Purdue University has one boiler currently under the emissions trading program and three that were accounted as small boilers of less

than 250 MMBtu per hour and not regulated under current rule. In April 2002, the U.S. E.P.A. notified IDEM that the three boilers are large non-EGU units and are, therefore, subject to regulation under the emissions trading program. This rulemaking adds the three boilers to the emissions trading program.

Indiana's NO_x rule does not impose costs above the federal NO_x rule; however, the state distributes allowances for the emissions trading program. The draft rule allocates 261 allowances to Purdue and 740 to Ispat Inland. If the source is able to comply with the rule using less than the number of allowances allocated, the remaining allowances may be kept or sold to other sources. If a source cannot comply with the number of allowances granted by the rule, it must either add controls to reduce emissions or purchase additional allowances to comply. Purdue will likely have to purchase allowances whereas Ispat will not.

Ispat does not need to purchase allowances because it burns a cleaner fuel, blast furnace gas, and its emission rate is lower than the target emission rate. Purdue's boilers burn coal, and the emission rate is higher than the target.

The fiscal impact includes total costs to the affected sources for the initial 6-year allocation period in the current rule. The rule must be reopened prior to 2009 to evaluate and make new allocations for the post-2009 ozone season.

Overall installation and annual (ozone season) costs are estimated below:

Total costs of installation of CEMs	$2,654,021
Ispat Inland $2,100,000	
Purdue University $554,021 (actual)	
Total annual ozone season costs to include operation and maintenance of CEMs and purchase of allowances for compliance purposes	$3,666,354
Ispat Inland $100,000 annual or $600,000 for six years	
Purdue would need 88 allowances * $4,850 + $84,259 operation and maintenance = $511,059 per year for 6 years = $3,066,354 (It is expected that the cost per ton of NO_x allowances will decrease over time.)	
Total costs (2003–2009)	$6,320,375

Ispat Inland anticipates that the cost of compliance with the NO_x rule will be offset by the sale of NO_x allowances. The sale of unused allocated allowances in 2004–2009 is estimated by Ispat Inland at $3,288,000.

Information Sources: Janet McCabe, Assistant Commissioner, and Kathryn Watson, Office of Air Quality, Indiana Department of Environmental Management

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD
#03-68(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING CORRECTIONS TO PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to make corrections to the Prevention of Significant Deterioration (PSD) requirements identified by the United States Environmental Protection Agency (U.S. EPA) in the January 15, 2003, Federal Register (68 FR 1970). The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 2-2-1; 326 IAC 2-2-6; 326 IAC 2-2-12.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

(1) the environment; or

(2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

On September 30, 1980, U.S. EPA delegated to IDEM the authority to implement and enforce the federal PSD program. On April 11, 2001, IDEM submitted a request to U.S. EPA to revise its State Implementation Plan (SIP) to incorporate its PSD regulations. On February 1, 2002, IDEM submitted to U.S. EPA a revised request resolving issues identified by U.S. EPA during an informal review.

On January 15, 2003, U.S. EPA conditionally approved the rules submitted on February 1, 2002, by the State of Indiana as revisions to its SIP, for PSD provisions for attainment areas. The approval is conditioned upon Indiana correcting a minor deficiency within one year of the effective date of the federal approval. The deficiency was the inadvertent omission of "minor new source review permits" from the exemption to the definition of "major modification". Other corrections related to the Federal Register notice are also addressed in this rulemaking.

The Federal definition of "major modification" excludes from a physical change or a change in the method of operation the use by a stationary source of an alternative fuel or raw material which the source was capable of accommodating before January 1, 1975, unless the change is prohibited under any permit condition established after January 6, 1975 pursuant to 40 CFR section 52.21 or under regulations

approved pursuant to 40 CFR Subpart I or 40 CFR section 51.166. 40 CFR Subpart I (40 CFR Part 51.160 through 40 CFR Part 51.166) contains requirements pertaining to minor new source review permits and major new source review permits in both attainment and nonattainment areas. Indiana's rule 326 IAC 2-2-1(x)(2)(E)(i) provides that the use of an alternative fuel or raw material is a change in the method of operation if prohibited by a condition of a permit issued pursuant to the authority of the PSD or major new source review programs, but does not address other new source review provisions. The omission of the reference to minor new source review provisions in 326 IAC 2-2-1(x)(2)(E)(i) was inadvertent. Indiana is not aware of any new source review permits that were not issued pursuant to PSD or major new source review authority that contains restrictions on the use of an alternative fuel or raw material; however, Indiana agreed to address this inadvertent omission within one year of the effective date of the conditional approval.

U.S. EPA granted conditional approval of the incorporation of the PSD rules into the SIP because it is unlikely that Indiana has limited the ability of any sources to use alternative fuels or raw materials through previous minor new source review permits and because Indiana committed in a December 12, 2002, letter to correct this minor deficiency within one year of the effective date of the federal approval. If Indiana does not correct this deficiency within one year of the federal action, U.S. EPA will initiate withdrawal of federal approval of the PSD rules into the SIP.

U.S. EPA also identified the following minor corrections to the State rules:

- In 326 IAC 2-2-1(y)(5), the words "and this subdivision" are superfluous.
- In 326 IAC 2-2-1(gg), "U.S. EPA" should be replaced with "IDEM" in the following sentence: "U.S. EPA shall give expedited consideration to permit applications...."
- In 326 IAC 2-2-6(b)(5), the phrase "whichever is later" is not necessary.

These wording differences do not constitute approvability issues; however, IDEM agreed to address them upon reopening the PSD rules.

In addition, upon review of U.S. EPA comments in the Federal Register notice, IDEM realized that in 326 IAC 2-2-12, the date of January 1, 2002, may be confusing. This date was intended to be the effective date of the Indiana PSD rule amendments. Since the department did not know at the time of final adoption what the actual effective date of the rule would be, an estimated date of January 1, 2002, was inserted. The actual effective date was January 19, 2002, so the draft rule substitutes this date for January 1, 2002. There should be no effect on sources from this correction.

In conclusion, this rule action is intended to correct the omission in the definition of "major modification" and make minor corrections addressed or identified in the Federal Register notice of January 15, 2003. This rulemaking is only intended to address the issues identified by U.S. EPA in the January 15, 2003, Federal Register regarding the PSD program as it existed at the time of the submittal on February 1, 2002. This rulemaking will ensure that IDEM's PSD program will remain an approved state program rather than a delegated federal program, and that appeals of permits will be made in a state rather than federal forum. The issue in this rulemaking is unrelated to and will not be affected by the new source review rule changes at the federal level. Issues related to the new source review (NSR) rules published in the Federal Register on December 31, 2002, will be addressed in a separate rulemaking. A First Notice of Comment Period rulemaking to consider NSR rule amendments is being published today in the Indiana Register.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on corrections to the PSD rules. These findings are prepared under IC 13-14-9-7 and are as follows:

(1) The rulemaking policy alternatives available to the department are so limited that the public notice and comment period under IC 13-14-9-7 would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule. U.S. EPA has required that the department correct the deficiency identified in the January 15, 2003, Federal Register notice, and identified specific minor corrections to a few other provisions. IDEM only has discretion regarding the actual language used to make the required change. IDEM has agreed to make the minor corrections. IDEM believes this notice and subsequent comment periods provide sufficient opportunity for public input on these points.

(2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.

(3) The draft rule is hereby incorporated into these findings.

Lori Kaplan
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#03-68(APCB), PSD Corrections
Chris Pedersen
c/o Administrative Assistant, Rules Development Section
Air Programs Branch
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the Tenth Floor reception desk, Office of Air Quality, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed or hand delivered by June 2, 2003.

Additional information regarding this action may be obtained from Chris Pedersen, Rules Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 2-2-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-1 Definitions

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

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

(b) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit, other than an electric utility steam generating unit described in subdivision (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.

(c) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area, as defined in section 13 of this rule. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(1) times of visitor use of the federal Class I area; and

(2) the frequency and timing of natural conditions that reduce visibility.

(d) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless a source is subject to enforceable permit limits which restrict the operating rate, or hours of operation, or both) and the most stringent of:

(1) the applicable standards as set forth in 40 CFR 60* and 40 CFR 61*;

(2) the state implementation plan emissions limitation, including those with a future compliance date; or

(3) the emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(e) "Baseline area" means the following:

(1) Any intrastate area (and every part thereof) designated as attainment or unclassifiable in accordance with 326 IAC 1-4 in which the major stationary source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubic meter ($\mu g/m^3$) (annual average) of the pollutant for which the minor source baseline date is established.

(2) Area redesignations under 326 IAC 1-4 and Section 107(d)(1)(D) or 107(d)(1)(E) of the Clean Air Act (CAA) cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(A) establishes a minor source baseline date; or

(B) is subject to 40 CFR 52.21* and this rule and would be constructed in the same state as the state proposing the redesignation.

(3) Any baseline area established originally for the total suspended particulate (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if U.S. EPA rescinds the corresponding minor source baseline date in accordance with 40 CFR 52.21(b)(14)(iv)*.

(f) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. The baseline concentration is determined for each pollutant for which a baseline date is established and shall include the following:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision (3).

(2) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(3) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(A) Actual emissions from any major stationary source on which the construction commenced after the major source baseline date.

(B) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

(g) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(h) "Best available control technology" or "BACT" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the provisions of the CAA, which would be emitted from any proposed major stationary source or major modification, which the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60* and 40 CFR Part 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard not feasible,

a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirements for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

(i) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office)*.

(j) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

(k) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy–Clean Coal Technology", up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

(l) "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(m) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

(n) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(o) "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (a) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(p) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant regulated under the provisions of the CAA.

(q) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

(r) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(s) "High terrain" means any area having an elevation nine hundred (900) feet or more above the base of the stack of a source.

(t) "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(u) "Indian reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(v) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(w) "Low terrain" means any area other than high terrain.

(x) "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emissions increase of any pollutant that is being regulated under the CAA. The following shall apply:

(1) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(C) Use of an alternative fuel by reason of an order under Section 125 of the CAA.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a source which:

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975, pursuant to:

(AA) 40 CFR 52.21*; ~~or under~~

(BB) this rule; ~~or~~

(CC) 326 IAC 2-3; or

(DD) minor new source review regulations approved pursuant to 40 CFR 51.160 through 40 CFR 51.166*; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21* or under this rule.

(F) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21* or under this rule or 326 IAC 2-3.

(G) Any change in ownership at a source.

(H) The addition, replacement, or use of a pollution control project as defined in subsection (dd) at an existing electric steam generating unit unless:

(i) the commissioner and U.S. EPA determine that such addition, replacement, or use renders the unit less environmentally beneficial; or

(ii) the commissioner determines that the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.

A pollution control project that is exempt under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8) or 326 IAC 2-7-10.5(f)(9).

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

(J) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(K) The reactivation of a very clean coal-fired electric utility steam generating unit.

(y) "Major stationary source" means the following:

(1) Any of the following stationary sources of air pollutants which are located or proposed to be located in an attainment or unclassifiable area as designated in 326 IAC 1-4 and which emit or have the potential to emit one hundred (100) tons per year or more of any pollutant subject to regulation under the CAA:

(A) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.

(B) Coal cleaning plants (with thermal driers).

(C) Kraft pulp mills.

(D) Portland cement plants.

(E) Primary zinc smelters.

(F) Iron and steel mill plants.

(G) Primary aluminum ore reduction plants.

(H) Primary copper smelters.

(I) Municipal incinerators capable of charging more than fifty (50) tons of refuse per day.

(J) Hydrofluoric, sulfuric, and nitric acid plants.

(K) Petroleum refineries.

(L) Lime plants.

(M) Phosphate rock processing plants.

(N) Coke oven batteries.

(O) Sulfur recovery plants.

(P) Carbon black plants (furnace process).

(Q) Primary lead smelters.

(R) Fuel conversion plants.

(S) Sintering plants.

(T) Secondary metal production plants.

(U) Chemical process plants.

(V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.

(W) Taconite ore processing plants.

(X) Glass fiber processing plants.

(Y) Charcoal production plants.

(Z) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels.

(2) Any stationary source with the potential to emit two hundred fifty (250) tons per year or more of any air pollutant subject to regulation under the CAA.

(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:

(A) Primary lead smelters.

(B) Secondary lead smelters.

(C) Primary copper smelters.

(D) Lead gasoline additive plants.

(E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.

(4) Any other stationary source with potential emissions of twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.

(5) Any physical change occurring at a stationary source not qualifying under subdivisions (1) through (4) ~~and this subdivision,~~ if the change would by itself qualify as a major stationary source under subdivisions (1) through (4).

(6) Notwithstanding subdivisions (1) through (5), a source or modification of a source shall not be considered a major stationary source if it would qualify under subdivisions (1) through (5) only if fugitive emissions, to the extent quantifiable, are considered in calculating potential to emit of the stationary source or modification and such source does not belong to any of the categories listed in subdivision (1) or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA (42 U.S.C. 7411 or 42 U.S.C. 7412).

(7) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(z) "Major source baseline date" means the following:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975.

(2) In the case of nitrogen dioxide, February 8, 1988.

(aa) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or major modification subject to the requirements of this rule or to 40 CFR 52.21* submits a complete application under the relevant regulations, including the following:

(1) The trigger date is the following:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977.

(B) In the case of nitrogen dioxide, February 8, 1988.

(2) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under 326 IAC 1-4 for the pollutant on the date of its complete application under this rule; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(3) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the commissioner may rescind a minor source baseline date where it can be shown, to the satisfaction of the commissioner, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

(bb) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and air quality control laws and regulations that are part of the state implementation plan.

(cc) "Net emissions increase", with reference to a significant net emissions increase, means the tons per year amount by which the sum of the following exceeds zero (0):

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a source.

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable as follows:

(A) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(i) the date five (5) years before construction on the particular change commences; and

(ii) the date that the increase from the particular change occurs.

(B) An increase or decrease in actual emissions is creditable only if the department has not relied on the increase or decrease in issuing a permit for the source under this rule, and the permit is in effect when the increase in actual emissions from the particular change occurs.

(C) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM_{10} emissions shall be used to evaluate the net emissions increase for PM_{10}.

(D) An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) it is enforceable at and after the time that actual construction on the particular change begins; and

(iii) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(F) An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

(dd) "Pollution control project" means, for purposes of this rule, any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to the following:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators.

(2) An activity or project to accommodate switching to a fuel that is less polluting than the fuel in use prior to the activity or project, including, but not limited to:

(A) natural gas or coal reburning; or

(B) the cofiring of natural gas and other fuels for the purpose of controlling emissions.

(3) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 42 U.S.C. 5903(d)*), or subsequent appropriations, up to a total amount of two billion five hundred million dollars ($2,500,000,000), for commercial demonstration of clean coal technology, or similar projects funded through appropriations for U.S. EPA.

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

(ee) "Potential to emit" means the maximum capacity of a source or major modification to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(ff) "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) has not been in operation for the two (2) year period prior to the enactment of the CAA Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;

(2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five percent (85%) and a removal efficiency for particulates of no less than ninety-eight percent (98%);

(3) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) is otherwise in compliance with the requirements of the CAA.

(gg) "Repowering" means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:

(1) Atmospheric or pressurized fluidized bed combustion.

(2) Integrated gasification combined cycle.

(3) Magnetohydrodynamics.

(4) Direct and indirect coal-fired turbines.
(5) Integrated gasification fuel cells.
(6) As determined by U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

Repowering shall also include any oil or gas-fired unit, or both, that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. ~~U.S. EPA~~ **The department** shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the CAA.

(hh) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions, the department shall do the following:

(1) Consider all relevant information, including, but not limited to, the following:
(A) Historical operational data.
(B) The company's own representations.
(C) Filings with Indiana or federal regulatory authorities.
(D) Compliance plans under Title IV of the CAA.

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(ii) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. The term includes emissions from any off-site support facility that would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. For the purpose of this rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from:

(1) the tailpipe of a motor vehicle;
(2) a train; or
(3) a vessel.

(jj) "Significant" means the following:

(1) In reference to a net emissions increase or the potential of the source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:
(A) Carbon monoxide: one hundred (100) tons per year.
(B) Nitrogen oxides: forty (40) tons per year.
(C) Sulfur dioxide: forty (40) tons per year.
(D) Particulate matter: twenty-five (25) tons per year.
(E) PM_{10}: fifteen (15) tons per year.
(F) Ozone: forty (40) tons per year of volatile organic compounds.
(G) Lead: six-tenths (0.6) ton per year.
(H) Asbestos: seven one-thousandths (0.007) ton per year.
(I) Beryllium: four ten-thousandths (0.0004) ton per year.
(J) Mercury: one-tenth (0.1) ton per year.
(K) Vinyl chloride: one (1) ton per year.
(L) Fluorides: three (3) tons per year.
(M) Sulfuric acid mist: seven (7) tons per year.
(N) Hydrogen sulfide (H_2S): ten (10) tons per year.
(O) Total reduced sulfur (including H_2S): ten (10) tons per year.
(P) Reduced sulfur compounds (including H_2S): ten (10) tons per year.
(Q) Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): thirty-five ten-millionths (0.0000035) or 3.5×10^{-6} ton per year.
(R) Municipal waste combustor metals (measured as particulate matter): fifteen (15) tons per year.
(S) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): forty (40) tons per year.
(T) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): fifty (50) tons per year.
(U) Ozone-depleting substances (ODS): one hundred (100) tons per year.
(V) Any pollutant subject to regulation under the CAA, other than the pollutants listed in this subsection or under Section 112(b) of the CAA*: any emission rate.

(2) Any emissions rate or any net emissions increase associated with a major stationary source or major modification that would be constructed within ten (10) kilometers of a Class I area and has an impact on such area equal to or greater than one (1) microgram per cubic meter (24-hour average).

(kk) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the CAA. A stationary source does not include emissions resulting from an internal combustion engine used for transportation purposes, or from a nonroad engine or nonroad vehicle.

(ll) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that:

(1) is operated for a period of five (5) years or less; and
(2) complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2391; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3022; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2020; filed Nov 25, 1998, 12:13 p.m.: 22 IR 997; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Oct 23, 2000, 9:47 a.m.: 24 IR 668; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2412; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1557)*

SECTION 2. 326 IAC 2-2-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-6 Increment consumption; requirements
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 6. (a) Any demonstration pursuant to section 5 of this rule should demonstrate that increased emissions caused by the proposed major stationary source or major modification will not exceed eighty percent (80%) of the available maximum allowable increases (MAI) over the baseline concentrations for sulfur dioxide, particulate matter, and nitrogen dioxide indicated in subsection (b)(1). Available maximum allowable increases are determined by adjusting the MAI to include impacts from:

(1) actual emissions from any major stationary source or major modification on which construction commenced after the major source baseline date; and

(2) actual emissions increases and decreases at any source occurring after the minor source baseline date.

On a case-by-case basis, a source may petition the commissioner to use in excess of this eighty percent (80%). The commissioner may authorize such use provided the source adequately demonstrates the need for the same.

(b) Increment consumption shall be in accordance with the following:

(1) The following allowable increments reflect the PSD increments for a Class II area (as defined in the CAA). Indiana has no Class I or Class III areas; however, should some areas of the state be classified as Class I or III, the PSD increments pursuant to 40 CFR Part 52.21* must be adhered to. New permits issued after January 1, 1995, shall use PM_{10} as the indicator for particulate matter. The allowable increments are as follows:

Maximum Allowable Increments

Pollutants	Allowable Increments (Micrograms per Cubic Meter, $\mu g/m^3$ Limits)
(A) Particulate Matter:	
(PM_{10}):	
Annual arithmetic mean	17
24-hour maximum	30
(B) Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
(C) Nitrogen Dioxide:	
Annual arithmetic mean	25

(2) For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

(3) When an applicant proposes to construct a major stationary source or major modification in an area designated as attainment or unclassified and the increments listed in subdivision (1) have been consumed, the increased emissions from the source or modification may be permitted to be offset by reducing emissions in the affected areas by an equal amount of the pollutant for which the area was designated as attainment or unclassified.

(4) The following pollutant concentrations shall be excluded when determining compliance with a maximum allowable increase:

(A) Concentrations attributable to the increase in emissions from sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such an order.

(B) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan.

(C) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources.

(D) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources that are affected by state implementation plan revisions approved by U.S. EPA are excluded provided the following criteria is met:

(i) Such exclusion shall not exceed two (2) years in duration unless a longer time is approved by the commissioner and the U.S. EPA.

(ii) Such exclusion is not renewable.

(iii) Such exclusion shall allow no emissions increase which would impact a Class I area or an area where an applicable increment is known to be violated, or cause or contribute to a violation of an ambient air quality standard as designated in 326 IAC 1-3.

(iv) An emission limitation shall be in effect at the end of the time period specified in accordance with item (i) which will ensure that the emissions levels will not exceed those levels occurring from such source before the exclusion was granted.

(5) No exclusion of such a concentration pursuant to subdivision (4)(A) through (4)(B) shall apply more than five (5) years after the date the exclusion is granted pursuant to this rule. ~~whichever~~ is ~~later.~~ If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the latter of such effective dates.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2025; filed Oct 3, 1995, 3:00 p.m.: 19 IR 185; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1567)*

SECTION 3. 326 IAC 2-2-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-12 Permit rescission
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15-6; IC 13-15-7; IC 13-17

Sec. 12. Any permit issued under this rule shall remain in effect unless and until it is rescinded, modified, revoked, or it expires in accordance with 326 IAC 2-1.1-9.5 or section 8 of this rule. The following apply to rescission:

(1) Any owner or operator of a major stationary source or major modification who holds a permit for the source or modification which was issued under 40 CFR 52.21* or this rule, prior to ~~January 1, 2002,~~ **July 30, 1987,** may request the commissioner to rescind the permit or a particular portion of the permit.

(2) The commissioner shall grant an application for rescission if the application shows that this rule would not apply to the major stationary source or major modification.

(3) If the commissioner rescinds a permit under this section the public shall be given adequate notice of the rescission. Publication of an announcement of the rescission in the affected region within sixty (60) days of the rescission shall be considered adequate notice.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-12; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2425; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1569)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2 and IC 13-14-9, notice is hereby given that on June 4, 2003 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 2-2-1, 326 IAC 2-2-6, and 326 IAC 2-2-12.

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

Additional information regarding this action may be obtained from Chris Pedersen, Rules Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

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

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

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

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

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE
#03-69(APCB)

DEVELOPMENT OF AMENDMENTS TO AMBIENT AIR QUALITY STANDARDS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to amend 326 IAC 1-3-4 that would add the new federal standard for ozone to Article 326 and has scheduled a public hearing before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-3-4.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

United States Environmental Protection Agency (EPA) has set National Ambient Air Quality Standards (NAAQS) for six common air pollutants, also called "criteria" pollutants. The criteria pollutants are carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. NAAQS are often referred to as federal health standards for outdoor air.

The Clean Air Act, which was passed in 1970 and last amended in 1990, requires EPA to set NAAQS for pollutants that cause adverse

effects to public health and the environment. The Clean Air Act established primary and secondary air quality standards. Primary standards protect public health, including the health of "sensitive" populations such as asthmatics, children, and the elderly. The primary standard is often referred to as the health standard. Secondary standards protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings. Standards are reviewed periodically to ensure that they include the most recent scientific information.

On July 18, 1997, EPA announced a new stricter NAAQS for ozone. After a lengthy scientific review process, including extensive external scientific review, EPA determined that these changes were necessary to protect public health and the environment. The new standard is intended to be more protective of the health of children and adults who play and work outdoors in the summer.

In establishing the 8-hour standard, EPA set the standard at 0.08 parts per million (ppm) as an average over an 8-hour period and defines the new standard as a "concentration-based" form, specifically the 3-year average of the annual 4th-highest daily maximum 8-hour ozone concentrations. This standard is in addition to the existing one-hour ozone standard, which remains effective nationwide. EPA is expected to clarify the transition between the two ozone standards in upcoming rules to implement the 8-hour ozone standard. In addition, IDEM has updated the one-hour ozone standard language to ensure consistency with the most current version of the federal ozone standards.

EPA intends to designate areas of the county that do not meet the 8-hour ozone standard as "nonattainment areas" in 2004. Indiana is expected to have a number of areas designated nonattainment, mostly large urban areas. Those designations will start a process in which the state will work with local communities, businesses and citizens to develop plans to bring the areas into attainment in the future.

The new $PM_{2.5}$ air quality standards will be addressed in a separate rulemaking that may also amend the current definition of particulate matter.

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation of the new federal standard for ozone, as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) This rule is an incorporation of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

(2) Indiana is required by the Clean Air Act to adopt the standards as state rules.

(3) U.S. EPA conducted extensive public process prior to promulgating the eight hour standard. Moreover, the standard was challenged in court and ultimately upheld by the United States Supreme Court. There has been ample opportunity for public comment and all appeals have been exhausted.

(4) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.

(5) The draft rule is hereby incorporated into these findings.

Lori F. Kaplan
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Gayla Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 extension 3-8628 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-3-4 Ambient air quality standards

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

Sec. 4. **(a)** The following ambient air quality standards, corrected to a reference temperature of ~~25° C.~~ **twenty-five (25) degrees Celsius** and to a reference pressure of seven hundred sixty (760) millimeters of mercury (one thousand thirteen and two-tenths (1,013.2 millibars)), as micrograms per cubic meter (µg/m^3). ~~shall apply.~~

(b) Ambient air quality standards are as follows:

(1) Sulfur oxides as sulfur dioxide (SO_2) **requirements are as follows:**

(A) For primary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) Eighty (80) **micrograms per cubic meter** (µg/m^3) (three-hundredth (0.03) **parts per million** (ppm)) annual arithmetic mean.

(ii) Three hundred sixty-five (365) µg/m^3 (fourteen-hundredth (0.14) ppm) maximum twenty-four (24) hour average concentration not to be exceeded more than one (1) day per year.

(B) For secondary standards, the following value shall represent the maximum permissible ambient air quality levels: one thousand three hundred (1,300) µg/m^3 (five-tenth (0.5) ppm) maximum three (3) hour concentration not to be exceeded more than once per year.

(C) ~~Sulfur dioxide~~ **SO_2** values may be converted to ~~parts per million~~ ppm using the conversion factor two thousand six hundred twenty (2,620) µg/m^3 = one (1) ppm.

(2) Total suspended ~~Particulate~~ **particulates** (TSP) **requirements are as follows:**

(A) For primary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) Seventy-five (75) µg/m^3 annual geometric mean.

(ii) Two hundred sixty (260) µg/m^3 maximum twenty-four (24) hour average concentration not to be exceeded more than one (1) day per year.

(B) For secondary standards, the following value shall represent maximum permissible ambient air quality levels: one hundred fifty (150) µg/m^3 maximum twenty-four (24) hour average concentration not to be exceeded more than one (1) day per year.

(3) Carbon monoxide (CO) **requirements are as follows:**

(A) For primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) Ten (10) milligrams per cubic meter **(mg/m^3)** (ten thousand (10,000) µg/m^3) (nine (9) ppm) maximum eight (8) hour average concentration not to be exceeded more than once per year.

(ii) Forty (40) ~~milligrams per cubic meter~~ **mg/m^3** (forty thousand (40,000) µg/m^3) (thirty-five (35) ppm) maximum one (1) hour average concentration not to be exceeded more than once per year.

(B) ~~Carbon monoxide~~ **CO** values may be converted to ~~parts per million~~ ppm using the conversion factor one thousand one hundred forty-five (1,145) µg/m^3 = one (1) ppm.

(4) Ozone (O_3) **requirements shall be as follows:**

(A) For ~~primary and secondary~~ **the one (1) hour ozone** standards, ~~the following values shall represent the maximum permissible ambient air quality level: the expected number of days with maximum hourly ozone concentrations above two hundred thirty-five (235) µg/m^3 (twelve-hundredths (0.12) ppm) shall not exceed one (1) per calendar year.~~ **the level of the one (1) hour primary and secondary ambient air quality standards for ozone measured by a reference method based on 40 CFR 50, Appendix D* and designated in accordance with 40 CFR 53* is twelve-hundredths (0.12) ppm (two hundred thirty-five (235) µg/m^3). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above twelve-hundredths (0.12) ppm (two hundred thirty-five (235) µg/m^3) is equal to or less than one (1) as determined by 40 CFR 50, Appendix H*.**

(B) For the eight (8) hour ozone standards, the:

(i) level of the eight (8) hour primary and secondary ambient air quality standards for ozone, measured by a reference method based on 40 CFR 50, Appendix D* and designated in accordance with 40 CFR 53*, is eight-hundredths (0.08) ppm, daily maximum eight (8) hour average; and

(ii) eight (8) hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the annual fourth highest daily maximum eight (8) hour average ozone concentration is less than or equal to eight-hundredths (0.08) ppm as determined in accordance with 40 CFR 50, Appendix I*.

~~(B) Ozone~~ **(C)** O_3 values may be converted to ~~parts per million~~ ppm using the conversion factor one thousand nine hundred sixty-five (1,965) µg/m^3 = ~~one (1)~~ **1.0** ppm.

(5) Nitrogen dioxide (NO_2) **requirements shall be as follows:**

(A) For primary and secondary ~~standard,~~ **standards,** the following value shall represent the maximum permissible ambient air quality level: one hundred (100) µg/m^3 (five-hundredth (0.05) ppm) annual arithmetic mean.

(B) ~~Nitrogen dioxide~~ **NO_2** values may be converted to ~~parts per million~~ ppm using the conversion factor one thousand eight hundred eighty (1,880) µg/m^3 = one (1) ppm.

(6) Lead (Pb): ~~(A)~~ For primary and secondary ~~standard,~~ **standards,** the following value shall represent the maximum permissible ambient air quality level: one and five-tenth (1.5) micrograms lead per cubic meter of air (µg of Pb/m^3), averaged over a calendar quarter and measured as elemental lead.

(7) PM_{10}: ~~(A)~~ For primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

~~(i)~~ **(A)** Fifty (50) µg/m^3 annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix K*, is less than or equal to fifty (50) µg/m^3.

~~(ii)~~ **(B)** One hundred fifty (150) µg/m^3 maximum twenty-four (24) hour average concentration. The standards are attained when the expected number of days per calendar year with a twenty-four (24) hour average concentration above one hundred fifty (150) µg/m^3, as determined in accordance with 40 CFR 50, Appendix K,* is equal to or less than one (1).

~~*This document is~~ ***These documents are** incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-3-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2378; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3020; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3055)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on June 4, 2003 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 1-3-4.

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

Additional information regarding this action may be obtained from Gayla Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana). Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

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

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

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE
#03-70(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT REDESIGNATION OF LAKE COUNTY FOR PM_{10}

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments concerning the

redesignation of Lake County to attainment for particulate matter with a nominal aerodynamic diameter of 10 microns or less (PM_{10}) and has scheduled a public hearing/meeting before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-4-1.

AUTHORITY: IC 13-14-8; IC 13-14-9-8; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

On November 6, 1991, EPA published a nonattainment designation for northern Lake County for the PM_{10} standards. These standards include annual average concentrations and a standard for 24-hour average concentrations. The area designated nonattainment included the cities of Gary, East Chicago, Hammond, and Whiting. During the 1990's, significant reductions in PM_{10} emissions were achieved in Lake County due to the adoption of PM_{10} control rules and efforts by Lake County industry. Air quality improved, as measured by IDEM's ambient air quality monitors. As a result, on September 25, 2002, Indiana requested that the PM_{10} designation for this area in Lake County be changed from nonattainment to attainment. Included with this request were a summary of relevant air quality data, evidence of the opportunity for public review of this request, including a public hearing held July 18, 2002, and a discussion of how the various criteria for redesignation have been met.

EPA published approval of Indiana's request to redesignate Lake County to attainment for PM_{10} in the Federal Register on January 10, 2003 (68 FR 1370). This action was effective March 11, 2003. U.S. EPA's action was based on a review of the five prerequisites for redesignation of areas from nonattainment to attainment as identified by Clean Air Act section 107(d)(3)(E). EPA concluded that these criteria have been met with respect to PM_{10} in Lake County. These criteria are:

1. The area has attained the applicable air quality standards.
2. The area has a fully approved State Implementation Plan (SIP) under section 110(k) of the Clean Air Act.
3. EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.
4. EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Clean Air Act.
5. The state has met all requirements applicable to the area under section 110 and part D of the Clean Air Act.

At this time, IDEM is proposing to make changes to Indiana's rules for consistency with the redesignation of Lake County to attainment for PM_{10}. U.S. EPA approved the maintenance plan for Lake County, which includes maintaining existing programs and air monitoring. The maintenance plan requires that certain rules specific to Lake County remain in effect.

A notice under IC 13-14-9-8 is appropriate for this rule action because it is a direct adoption of a federal requirement and contains no amendments that have a substantive effect on the scope or intended application of the federal rule. In addition, IDEM conducted a public hearing on July 18, 2002 in Gary, Indiana, as required by Section 100(a)(2) of the Clean Air Act to ensure proper public participation. U.S. EPA conducted a public process as well when it approved Indiana's redesignation request.

This rulemaking incorporates into state rules 68 FR 1370 (January 10, 2003), the final approval for redesignating Lake County to attainment for the PM_{10} standards. Until the state rulemaking is effective, Lake County will be subject to the state's nonattainment rules, including the permitting rules. Rules included in the maintenance plan for Lake County continue to apply to the redesignated area.

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the redesignation of Lake County to attainment for PM_{10} as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

(2) Indiana is required by federal law to adopt the redesignation of Lake County for PM_{10} as established by the United States Environmental Protection Agency.

(3) The public will benefit from prompt adoption of this rule, because it provides consistency with the federal rule that redesignates Lake County to attainment for PM_{10}.

(4) There have already been two public processes, one at the state

level and one at the federal level, on the policy issue that is the subject of this rulemaking.

(5) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.

(6) The draft rule is hereby incorporated into these findings.

Lori Kaplan
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Chris Pedersen, Rules Section, Office of Air Quality (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-4-1, AS AMENDED AT 26 IR 1077, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-4-1 Designations

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

Sec. 1. The air pollution control board incorporates by reference:

(1) 40 CFR 81.315*; ~~and~~

(2) 66 FR 53665 (October 23, 2001)*; **and**

(3) 68 FR 1370 (January 10, 2003)*;

concerning attainment status designations.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056; filed Nov 15, 2002, 11:17 a.m.: 26 IR 1077)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on May 7, 2003 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 1-4-1.

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

Additional information regarding this action may be obtained from Chris Pedersen, Rules Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana). Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
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P.O. Box 6015
Indianapolis, Indiana 46206-6015

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

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

TITLE 327 WATER POLLUTION CONTROL BOARD

LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS
301 State House
(317) 232-9855
ADMINISTRATIVE RULE
FISCAL IMPACT STATEMENT

PROPOSED RULE: LSA #01-95
DATE PREPARED: Mar 10, 2003
STATE AGENCY: IDEM
DATE RECEIVED: Jan 24, 2003
FISCAL ANALYST: Bernadette Bartlett
PHONE NUMBER: 317-232-9586

Digest of Proposed Rule: This rule is being initiated due to the new federal Phase II program regulations for storm water discharges. The National Pollutant Elimination System (NPDES) storm water Phase II final rule was published on December 8, 1999, at 64 FR 68722. Therefore, amendments to 327 IAC 15-5, storm water run-off associated with construction activity, and 327 IAC 15-6, storm water discharges associated with industrial activity, seek to modify and revise the existing rules to add the federal Phase II requirements, add changes to the Phase I program, and add clarity and effectiveness to the existing program. Revisions are also being made to 327 IAC 15-2 and 327 IAC 15-3, to bring them in line with the proposed amendments to the storm water rules.

Governmental Entities: There are no unfunded mandates placed upon any state or local agency by the proposed changes.

Regulated Entities: The rule would designate three new industrial sectors for regulation that are not under the current federal storm water program. The three new sectors are:

(1) Agricultural fertilizer/pesticide storage facilities;

(2) Truck refueling facilities with on-site vehicle maintenance operations;

(3) Solid waste transfer stations.

The proposed rule would affect an estimated 730 facilities. Total annual cost for these regulated entities is estimated to range from $1,433,720 to $1,941,800. A breakdown of costs incurred is listed in the table below.

Item	Initial Cost Per Facility (1st year or one-time cost)	Total Cost Per Facility Over 5-year Permit Term	Cost Per Facility Per Year (Total Cost/5 years)
Storm Water Pollution Plan Development	$2,568–$4,767	$2,568–$4,767	$514–$953
Notice of Intent Submittal	$867–$1,233	$867–$1,233	$173–$247
Grab Sample Collection	$274	$1,370	$274
Grab Sample Analysis	$143	$715	$143
Annual Report	$750–$933	$3,750–$4,665	$750–$933
Application Fee	$50	$50	$10
Annual Fee	$100	$500	$100
Totals	$4,652–$7,500	$9,320–$13,300	$1,964–$2,660

Type of Facility	Number of Facilities	Annual Costs for 5 years
Agricultural Fertilizer/Pesticide Storage Facilities	550	$1,080,200–$1,463,000
Truck Refueling Facilities with On-site Vehicle Maintenance Operations	130	$255,320–$345,800
Solid Waste Transfer Stations	50	$98,200–$133,000
Total Annual Costs	730	$1,433,720–$1,941,800

Information Sources: Kiran Verma, Indiana Department of Environmental Management (317) 234-0986.

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBERS: 97-0296 and 97-0297
Indiana Sales/Use Tax
For Tax Years 1992 through 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax – Equipment and Materials Directly Used or Consumed in Direct Production, Manufacturing, Processing, and Refining

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-2.5-3-4, IC 6-2.5-5-3; IC 6-2.5-5-5.1, IC 6-2.5-5-5.1, IC 6-2.5-5-30; 45 IAC 2.2-5-8(k), 45 IAC 2.2-5-10(k); White River Environmental v. Department of State Revenue, 694 N.E.2d 1248 (Ind.Tax 1998); Mechanics Laundry & Supply, Inc. v. Department of State Revenue, 650 N.E.2d 1223 (Ind.Tax 1995); Indianapolis Fruit Co. v. Department of State Revenue, 691 N.E.2d 1379, (Ind.Tax 1998); Indiana Dept. of State Revenue v. Cave Stone, 457 N.E.2d 520 (Ind. 1983); Rotation Products v. Department of State Revenue, 690 N.E.2d 795 (Ind.Tax 1998); Faris Mailing v. Dept. of State Revenue, 512 N.E.2d 480 (Ind.Tax 1987); General Motors v. Department of State Revenue, 578 N.E.2d 399, 404 (Ind.Tax 1991)

Taxpayer protests assessments of use tax on various purchases of equipment and materials.

II. Tax Administration – Negligence Penalty

Authority: IC 6-8-10-2.1; 45 IAC 15-11-2

Taxpayer protests assessment of the negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a waste management facility in Indiana. Taxpayer's primary business activities involve the collection (removal and site cleanup), transport, treatment, and disposal of hazardous and non-hazardous industrial waste materials. Taxpayer analyzes incoming waste materials to determine the optimal method for treatment and disposal. Treated waste may be recycled as scrap, disposed of in landfills, or transferred to permitted facilities where such waste can be used (consumed) as recycled fuel. Taxpayer also provides site restoration and environmental remediation services.

For the years subject to audit (1992 – 1995), taxpayer failed to self-assess and remit use tax on its taxable purchases. Audit, after reviewing taxpayer records to identify items acquired by taxpayer in retail transactions, proposed assessments of use tax.

Taxpayer now takes exception to Audit's determinations and ensuing use tax assessments. Specifically, taxpayer claims the proposed assessments are excessive because Audit, in its use tax calculus, failed to exclude purchases exempt from sales/use tax pursuant to IC 6-2.5-5-3 (the equipment exemption), IC 6-2.5-5-5.1 (the consumption exemption), and IC 6-2.5-5-30 (the environmental quality compliance exemption).

DISCUSSION

I. Sales/Use Tax – Equipment and Materials Used or Consumed in Production

Audit disagreed with and dismissed taxpayer's exemption claims. Audit rejected taxpayer's conclusions regarding both the impact and relevance of the cited exemptions. "Only taxpayers engaged in the production of tangible personal property," says Audit, "will qualify for the equipment, consumption, and environmental quality compliance exemptions." Audit previously had characterized taxpayer's business activities—conducted primarily at a full service waste treatment, storage, and disposal facility—as those of a *service* provider. And service providers, according to Audit, generally, are not engaged in production activities. Audit reasoned that since this taxpayer *did not produce products for resale*, it could not claim the exemptions.

Taxpayer countered by arguing that it qualified for the exemptions because it was, in fact, engaged in production activities—specifically that of processing and refining. Taxpayer describes its business activities in the following manner:

Taxpayer is engaged in the business of processing and refining hazardous and nonhazardous waste into alternative fuels and metallic by-products. This process involves obtaining certain types of hazardous and nonhazardous waste, removing scrap metal by-products, and converting the waste into an alternative fuel.

.....

The Taxpayer's operations involve the conversion of waste materials into useable products including the [f]uel, which is used by cement producers in their kilns, and metallic by-products, which are sold to scrap metal dealers.

To summarize, taxpayer contends that is engaged in "production" because it "wrests usable fuels out of useless liquid and solid waste materials" and "creates value from waste products by extracting and processing usable metallic materials from the waste products."

Authorities

Indiana imposes a gross retail tax (sales tax) on retail transactions made in Indiana. IC 6-2.5-2-1. Indiana also imposes a use tax on the "storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction." IC 6-2.5-3-2. Use tax, however, will not be imposed on property stored, used, or consumed in Indiana if sales tax has been paid on the property acquired, or if the property acquired is exempt, pursuant to IC 6-25-5, from Indiana sales tax. IC 6-2.5-3-4(a).

There exist within IC 6-2.5-5 a number of sales/use tax exemptions. Manufacturing machinery, tools, and equipment acquired "for the direct use in the direct *production, manufacture, … processing, refining, or finishing* of other tangible personal property" are exempt from Indiana sales/use tax. See IC 6-2.5-3(b), the "equipment" exemption. Additionally, property acquired "for direct consumption as a material to be consumed in the direct *production* of other tangible personal property in the person's business of *manufacturing, processing, refining…*" is exempt from Indiana sales/use tax. See IC 6-2.5-5-5.1, the "consumption" exemption. And property constituting, incorporated into, or consumed in the operation of "a device, facility, or structure predominantly used and acquired for the purpose of complying with any…environmental quality statutes, regulations, or standards" is also exempt from Indiana sales/use tax. See IC 6-2.5-5-30(1), the "environmental quality compliance" exemption. But note: the entity acquiring property for the purpose of complying with environmental quality statutes, regulations, or standards must be "engaged in the business of *manufacturing, processing, refining, mining, or agriculture*." IC 6-2.5-5-30(2). Emphases added.

These exemption provisions require the taxpayer claiming such exemptions to have been engaged in production activities. "The terms listed in the exemption provisions, i.e., processing, manufacturing, etc., 'have meaning only to the extent that there is production.'" (The Indiana Tax Court in White River Environmental v. Department of State Revenue, 694 N.E.2d 1248,1250 (Ind.Tax 1998) quoting from Mechanics Laundry & Supply, Inc. v. Department of State Revenue, 650 N.E.2d 1223, 1228 (Ind.Tax 1995).) "If there is no production of goods, the exemption provisions do not apply." Id. "There is one ironclad rule: without production there can be no exemption." Indianapolis Fruit Co. v. Department of State Revenue, 691 N.E.2d 1379, 1384 (Ind.Tax 1998). Taxpayer's entitlement to the cited sales and use tax exemptions depends, therefore, not on whether its activities may be characterized as processing or refining, but on whether taxpayer is engaged in the production of goods or other tangible personal property. (Also see White River Environmental at 1251.)

Regulation 45 IAC 2.2-5-8(k) sheds light on this concept of "production":

> "Direct production, manufacture, fabrication, assembly, or finishing of tangible personal property" is performance as a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. The change in form, composition, or character must be a substantial change, and it must result in a transformation of property into a different product have a distinctive name, character, and use.

Regulation 45 IAC 2.2-5-10(k) provides the following definition of " processing and refining."

> Processing or refining is defined as the performance by a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. … A processed or refined end product…must be substantially different from the component materials used.

Indiana common law has contributed to the definition of "production"—at least in the context of the sales/use tax exemptions. Indiana courts have identified certain situations in which specific activities will (or will not, as the case may be) constitute production.

For example, the Indiana Supreme Court, in Indiana Dept. of State Revenue v. Cave Stone, 457 N.E.2d 520, 525 (Ind. 1983), found that production had occurred where crude stone, blasted from a quarry, was crushed into aggregate stone. The Indiana Tax Court characterized the exposure of bananas to ethylene gas as "production". "Although the ripened bananas are still bananas, they have been placed in a 'form, composition, or character substantially different from that in which [they] were acquired.' They [the bananas] have been transformed both physically and chemically, and this transformation [ripening] makes a marketable banana from an unmarketable one." Indianapolis Fruit at 1385. Likewise, the Indiana Tax Court found that the remanufacture of roller bearings constituted production within the meaning of the equipment and consumption exemptions. "[T]his Court finds that RPC [taxpayer] substantially transforms the unusable roller bearings when it remanufactures them and thereby produces other tangible personal property. In other words, a scarce economic good has been created." Rotation Products v. Department of State Revenue, 690 N.E.2d 795, 804 (Ind.Tax 1998).

On the other hand, the Indiana Tax Court determined that a taxpayer in the business of hauling waste was not engaged in production. "[Taxpayer] simply transports garbage. That it compresses the garbage is irrelevant: to have a colorable claim for the equipment exemption, it would have to compress the garbage as part of its own process to produce other tangible personal property, not as part of an alleged process of another taxpayer." Indiana Waste Systems of Indiana at 363. And in Faris Mailing v. Dept. of State Revenue, 512 N.E.2d 480 (Ind.Tax 1987), the Indiana Tax Court determined that taxpayer's assembling of packaging materials on behalf of customers did not constitute "production." "Regardless of what Petitioner chooses to call his business, 'production of other tangible personal property' is required. … The items used in [taxpayer's] process cannot reasonably be assumed to transform the customer's package into a new product." Id. at 483. The Indiana Tax Court also found that the laundering of soiled textiles does not represent production within the meaning of the equipment, consumption, and environmental compliance exemptions. "The

supreme court's expansive definition of 'production' [referring to the Indiana Supreme Court's Cave Stone opinion], however, in no way negates the requirement that the overall production process, whether it be termed 'processing' or otherwise, must result in the production of goods or other tangible personal property. Thus, despite Mechanics Laundry's [taxpayer's] attempt to explain its operation in a manner that conforms to the supreme court's definition of 'production,' the laundering of soiled textiles does not constitute 'production.'" Mechanics Laundry & Supply at 1229.

Issue

At issue, then, is whether taxpayer's activities constitute the production of goods or other tangible personal property. Specifically, whether the *extraction* of scrap metal by-products and the *conversion* of waste materials into alternative fuel represent exempt production activities.

Taxpayer receives hazardous and non-hazardous waste from manufacturers and service providers (i.e., taxpayer's customers). These customers pay taxpayer a fee for accepting their waste. The incoming waste will be analyzed by taxpayer to determine proper treatment and disposal methods. Taxpayer will then treat (if necessary) and dispose of the waste accordingly. Disposal methods vary. Some waste will be buried in landfills; some waste will be segregated and sold (e.g., the scrap metal); and some waste will be treated and transferred, for a price, to others who use the treated waste as fuel for kilns. That is, taxpayer will *pay* others (in this instance, qualified cement manufacturers) to dispose of taxpayer's waste materials.

Conversion of waste into fuel

Taxpayer claims the equipment, consumption, and environmental quality compliance exemptions based upon activities in which taxpayer converts industrial waste into usable fuel. Taxpayer explains:

> Taxpayer's various processes clearly are of the type that involve the production of 'other tangible personal property.' The [f]uel results from the transformation of hazardous waste products into a new form that has a valuable use to the Taxpayer's Customers.

With regard to taxpayer's fuel conversion activities, the Department need not parse taxpayer's processes in order to identify indicia of production. The Department need not determine whether taxpayer's activities transform hazardous waste into usable fuel. The Department need not perform such analyses because taxpayer does not *sell* usable fuel. Rather, taxpayer *pays* others to accept and dispose of such fuel. Absent the creation of a marketable product, taxpayer cannot have been engaged in production. The "marketable" moniker, of course, is a function of sales; if the fruits of taxpayer's labors are not sold, a marketable product cannot have been produced. Case law supports this commonsense conclusion.

The Indiana Tax Court indicated the close relationship between sales and the concept of "marketability" in its Indianapolis Fruit opinion when it stated:

> Most of these fruits and vegetables require little in the way of *processing before resale* because they are in a *marketable* condition when Indianapolis Fruit [the taxpayer] receives them. That is not the case with bananas and tomatoes; when Indianapolis Fruit [taxpayer] receives them, they are not marketable, and they require additional processing to put them into that condition. Emphasis added. Id. at 1381.

The Indiana Tax Court in White River Environmental, after stating the maxim that production "is defined broadly and focuses on the creation of a marketable product," wrote:

> Despite the possibility that the clean water, ash, and sludge created by WREP's [taxpayer's] waste treatment process may be sold in the future, the fact remains that those byproducts are not sold in the present. Accordingly, they remain the byproducts of a useful service, not goods for the marketplace. See Indiana Dep't of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520, 524 (1983) (production encompasses all activity directed to increasing the number of scarce economic goods, i.e., *goods to be sold in the marketplace*). Emphasis added.

So, regardless of the endeavor taxpayer professes to be engaged in, it cannot be characterized as "production." Even though taxpayer's treatment of industrial waste permits taxpayer to *dispose* of its waste in a more economical manner, such effects, for purposes of the claimed exemptions, will not serve to transform "treatment" into "production."

Recapture of metallic by-products

Taxpayer contends "extraction" of metallic by-products from industrial waste and the subsequent sale (as scrap) of such by-products represent, collectively, production for purposes of the equipment, consumption, and environmental quality compliance exemptions. Taxpayer states "[these] exemption[s] appl[y] to all equipment used and materials consumed as 'an essential and integral part of an integrated production process' which produces metallic by-products."

Taxpayer, in this instance, *sells* tangible personal property. Taxpayer *sells* the collected metallic by-products for scrap. Taxpayer, however, does not create a *processed* or *refined* end product. Taxpayer does not place "tangible personal property in a form, composition, or character different from that in which it was acquired." 45 IAC 2.2-5-10(k). Rather, the metallic by-products are *recovered* from industrial waste materials. Such activity does not represent, as taxpayer claims, the selling of byproducts *produced* in the course of taxpayer's business. Taxpayer's labors result in neither a "different product" nor a "refined end product…substantially different from the component materials used." 45 IAC 2.2-5-10(k) and 45 IAC 2.2-5-8(k). Consequently, taxpayer's recovery and collection of metallic by-products from industrial waste cannot, regardless of the label used by taxpayer (e.g., manufacturing, processing, or refining), represent production.

Conclusion

The legislature intended the exemptions at issue to be available only to those engaged in the production of goods or other tangible personal property. See General Motors v. Department of State Revenue, 578 N.E.2d 399, 404 (Ind.Tax 1991) and Mechanics Laundry at 1230. Taxpayer, however, is not engaged in production. Taxpayer produces neither goods nor other tangible personal property. Rather, taxpayer transports, treats, and disposes of hazardous and non-hazardous industrial waste materials. Pursuant to statute, regulation, and relevant case law, taxpayer will not qualify for and may not claim the equipment, consumption, and environmental quality compliance exemptions.

FINDING

Taxpayer's protest is denied.

II. Tax Administration – Negligence Penalty

The Department may impose, in certain situations, a ten percent (10%) negligence penalty. IC 6-8-10-2.1 and 45 IAC 15-11-2. Taxpayer's failure to report and remit use tax generally will result in penalty assessment. IC 6-8.1-10-2.1(a)(1). The Department, however, will waive this penalty if taxpayer can establish that its failure to file "was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). A taxpayer may demonstrate reasonable cause by showing "that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed…." *Id.* Taxpayer has failed to make such a showing.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02970298.LOF

LETTER OF FINDINGS NUMBER: 97-0298
Indiana Gross and Adjusted Gross Income Tax
For Tax Years 1992 through 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax – Enterprise Zone Exemption

Authority: IC 4-4-6.1-2.5, IC 6-2.1-3-32; CNB Banchares, Inc. v. Department of State Revenue, 700 N.E.2d 616 (Ind.Tax 1999); St. Mary's Medical Center v. State Bd. of Tax Comm'rs, 534 N.E.2d 277 (Ind.Tax 1989); Caylor-Nickel Clinic v. Dept. of State Revenue, 569 N.E.2d 765 (Ind.Tax 1991)

Taxpayer protests the Department's disallowance of an enterprise zone gross income exemption.

II. Gross, Adjusted Gross, and Supplemental Net Income Tax – Methods Used to Compute Tax Liabilities

Authority: IC 6-8.1-5-1, IC 6-8.1-9-1; 45 IAC 15-9-29(d), 45 IAC 15-11-3

Taxpayer protests the Department's calculation of taxpayer's Indiana income tax liabilities.

III. Tax Administration – Negligence Penalty

Authority: IC 6-8-10-2.1; 45 IAC 15-11-2

Taxpayer protests the assessment of a negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a waste management facility in Indiana. Taxpayer's primary business activities involve the collection (removal and site cleanup), transport, treatment, recycling, and disposal of hazardous and non-hazardous waste materials. Taxpayer analyzes incoming waste materials to determine the optimal method for treatment and disposal. Treated waste may be recycled as scrap, disposed of in landfills, or transferred to permitted facilities where such waste can be used as recycled fuel. Taxpayer also provides restoration and remediation services.

For the years subject to audit (1992 – 1994), taxpayer failed to file Indiana income tax returns. To determine taxpayer's Indiana income tax liabilities, Audit inspected relevant taxpayer documents and directed inquiries to appropriate taxpayer personnel. Audit's research resulted in proposed assessments of Indiana income tax. Taxpayer has protested these assessments.

DISCUSSION

I. Gross Income Tax – Enterprise Zone Exemption

In computing taxpayer's Indiana gross income tax liabilities, Audit, according to taxpayer, failed to exclude from taxpayer's Indiana gross receipts certain income derived from sources within an enterprise zone. Taxpayer contends Audit's decision was driven by taxpayer's failure to notify the appropriate enterprise zone board of its intent to claim the exemption.

All qualified increased enterprise zone gross income is exempt from the Indiana gross income tax. IC 6-2.1-3-32. Generally, taxpayers eligible to claim zone business incentives (including the qualified increased enterprise zone gross income exemption) "shall, by letter postmarked before June 1 of each year: (1) submit to the board and to the zone urban enterprise association…a verified summary concerning the amount of tax credits and exemptions claimed by the business in the preceding year; [and] (2) pay the amount specified in section 2(4) of this chapter to the board." IC 4-4-6.1-2.5(a). Failure to comply with these requirements may result in penalties, denial of incentives, or disqualification from further participation in the enterprise zone program. IC 4-4-6.1-2.5(d) and (e). Entitlement to the "increased enterprise zone gross income" exemption of IC 6-2.1-3-32, however, contains no such notification requirement. It is sufficient, for purposes of claiming the exemption, to show the income represented "qualified increased enterprise zone gross income." The statute requires nothing more. (Also see CNB Banchares, Inc. v. Department of State Revenue, 700 N.E.2d 616 (Ind.Tax 1999).

The taxpayer claiming an exemption, however, "has the burden of showing the terms of the exemption statute are met." St. Mary's Medical Center v. State Bd. of Tax Comm'rs, 534 N.E.2d 277, 281 (Ind.Tax 1989). Taxpayer, therefore, must show that it has, in fact, received "qualified increased enterprise zone income" as defined in IC 6-2.1-3-32. Taxpayer, though, has failed to do so.

In Caylor-Nickel Clinic v. Dept. of State Revenue, 569 N.E.2d 765 (Ind.Tax 1991), the Indiana Tax Court found that the timely filing of Form IT-20SC under IC 6-2.1-3-24.5(d) *was not* a condition precedent to obtaining the small business corporation gross income tax exemption provided for in IC 6-2.1-3-24.5(b). Along with its findings, however, the Court offered the following cautionary language:

> Finding IC 6-2.1-3-24.5(d) [timely filing of Form IT-20SC] is not a condition precedent to obtaining the exemption provided in IC 6-2.1-3-24.5(b) [the small business corporation gross income tax exemption], however, does not render the filing requirement meaningless and is consistent with the rule that exemption statutes are construed in favor of imposing tax. IC 6-2.1-3-24.5(d) does impose upon the taxpayer claiming exemption the burden of showing the terms of the exemption statute are met. Consequently, a taxpayer failing to meet this burden, not qualifying for exemption, is subject to assessment.

Id. at 770.

Such logic applies to this controversy as well.

FINDING

Taxpayer's protest is denied.

II. Gross, Adjusted Gross, and Supplemental Net Income Tax – Methods Used to Compute Tax Liabilities

To determine taxpayer's gross receipts for *Indiana gross income* tax purposes, Audit, pursuant to a signed projection agreement (dated 11/25/96), tallied taxpayer invoices for a three-month period. Audit segregated taxpayer's invoiced revenue for the period into revenue earned both from within and without Indiana. The percentage of Indiana sales to total sales for the three-month period was then computed. Taxpayer's annual invoice-generated revenue for each year was multiplied by this ratio to arrive at taxpayer's Indiana gross receipts.

Audit, in order to compute taxpayer's *Indiana adjusted gross income* tax liabilities for the tax period, started with taxpayer's federal income as reported on Federal Form 1120 and then made the appropriate Indiana adjustments pursuant to 45 IAC 3.1-1-5.

Taxpayer has disagreed with these results. Taxpayer explains:

> The Taxpayer did not timely file Indiana tax returns for the years at issue [1992 – 1994]. The Department of Revenue made their adjustments based upon estimates and approximations. The Taxpayer has since filed Indiana returns based upon actual information the Taxpayer has available. The Taxpayer's returns do not agree with the Department's adjustments, and the Taxpayer is therefore requesting an opportunity to reconcile the differences.

When the Department believes a taxpayer has failed to report the proper amount of tax due, pursuant to IC 6-8.1-5-1(a), "the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department…."

Returns filed by taxpayer *after* the Department has completed its income tax audit and after the Department has sent notices of deficiency to taxpayer will not serve as proxy for timely filed original returns. Taxpayer's delinquent returns, depending on context, may (if respective statutory requirements are met) represent a protest of proposed assessments under IC 6-8.1-5-1(c) or a claim for refund under IC 6-8.1-9-1(a).

To succeed as a *protest of a proposed assessment*, taxpayer's submissions must overcome the *rebuttable presumption* that "[t]he notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid." IC 6-8.1-5-1(b). To succeed as a legally cognizable *refund claim*, the claim "must set forth the amount of the refund to which the person is entitled and the *reasons* that the person is entitled to the refund." IC 6-8.1-9-1(a). That is, a valid refund claim must include (1) the amount of refund claimed; (2) a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness; (3) the tax period for which the overpayment is claimed; and (4) the year and date the overpayment was made. 45 IAC 15-9-29(d).

Taxpayer's request "to reconcile the differences" between the audit assessments resulting in deficiency notices and taxpayer's tax liabilities as represented on its delinquent returns is incomplete. Neither taxpayer's request nor subsequently filed returns

provides the Department with the information necessary to determine the basis of taxpayer's protest or refund claim. Because taxpayer's submissions do not rebut the presumption that the assessments were valid, or collectively rise to the level of a refund claim, taxpayer's request to "reconcile the differences" must be denied.

FINDING

Taxpayer's protest is denied.

III. Tax Administration – Negligence Penalty

The Department may impose, in certain situations, a ten percent (10%) negligence penalty. IC 6-8-10-2.1 and 45 IAC 15-11-2. Taxpayer's failure to timely file income tax returns, generally, will result in penalty assessment. IC 6-8.1-10-2.1(a)(1). The Department, however, may waive the penalty if taxpayer can establish that its failure to file "was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). A taxpayer may demonstrate reasonable cause by showing "that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed…." *Id*. Taxpayer has failed to make such a showing.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

1498007SFT.LOF

LETTER OF FINDINGS NUMBER 98-007SFT
Special Fuel Tax for the Period
January 1, 1994 – May 31, 1997

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the *Indiana Register* and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the *Indiana Register*. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Special Fuel Tax – Imposition –Taxable Event

Special Fuel Tax –Imposition – Imports – Parties Liable

Tax Administration – Special Fuel Supplier's Duties to Collect/Remit Tax

Authority: I.R.C. (26 U.S.C.) §§ 4081-4083 (1994); IC §§ 6-6-2.5-57(b) and -8.1-5-4(a) (1993); IC §§ 6-6-2.5-20, -35 and -40(f) (1993 and Supps. 1994-97); IC § 6-8.1-5-1(b) (1998); Treas. Reg. (26 C.F.R.) §§ 48.4081-1(b) and -2(c)(1) (1996-2002); Treas. Reg. (26 C.F.R.) § 48.4081-1(m) and Temp. Treas. Reg. (26 C.F.R.) § 48.4081-11T(b)(1) (1994-95)

The taxpayer alleges that it is not liable for special fuel tax on fuel sold from five out-of-state terminals in which it maintained inventory positions to several of its customers that have operations in Indiana. The taxpayer argues that information provided by those customers, and its own records, show that the majority of the special fuel was delivered in the respective states of origin, i.e. the states in which the respective terminals from which the taxpayer removed it are located.

II. Tax Administration – Special Fuel Supplier's Duties to Collect/Remit Tax

Special Fuel Tax – Imposition – Imports – Payment of Fuel Tax to State of Export

Authority: IC § 6-6-2.5-30(a)(1) (1993 and Supps. 1994-97)

In the alternative to its argument that most of the assessed fuel remained in its respective states of origin, the taxpayer contends that tax was paid on the fuel to those states.

III. Special Fuel Tax – Imposition – Status of Taxed Substance as Special Fuel

Authority: IC § 6-6-2.5-22 (1993 and Supps. 1994-97); IC § 6-8.1-5-1(b) (1998)

The taxpayer contends that some of the imports of one of its customers were not special fuel, but kerosene, and as such not subject to imposition of special fuel tax.

SUMMARY OF FINDINGS

The taxpayer's protest is sustained in part and denied in part as to Issue I, and denied as to Issues II and III, as discussed below.

STATEMENT OF FACTS

A. Introduction – The Taxpayer/Supplier, Its Customers and the Terminals

1. The Taxpayer/Supplier

Between January 1, 1994 and May 31, 1997 (hereinafter "the audit period") the taxpayer, an out-of-state general partnership formed by two corporations, refined and distributed petroleum products. It engaged in distribution both through its own chain of retail outlets and to customers that had their own chain-outlet retail operations. The taxpayer did business in Indiana during the audit period, maintaining inventory positions in several terminals in the state. For that reason it held an Indiana special fuel supplier's

license from January 1, 1994 to April 30, 1997, when the Department cancelled the license at the taxpayer's request incident to the dissolution of the partnership. (The partnership used the supplier's license of one of its corporate partners to wind up the partnership's affairs.) By virtue of its status as a licensed supplier the Department will also refer to the taxpayer in this letter as "the supplier."

2. The Taxpayer's Customers and Terminals

In addition to its supplier's license, on June 30, 1994 the taxpayer executed and submitted to the Department a Tax Precollection Agreement Application (Form SF-10A). It checked Option 1 on that form, which states that an electing supplier or permissive supplier "agree[s] to treat all out-of-state terminal removals of undyed special fuel for export into Indiana, as if they were received in Indiana, and will collect the Indiana special fuel tax from every purchaser." *Id.*

The audit adjustment in issue in this protest assessed the taxpayer's receipt of unreported gallons of special fuel that formed the subjects of certain transactions between it and eight of its customers. However, the supplier submitted documents to the auditor, or documents or argument in support of its protest, as to only seven of these customers, to which the Department will hereinafter refer as Customers A through G. Each special fuel transaction occurred at one of five terminals, located in one of three states adjoining Indiana, in which the taxpayer maintained fuel inventory positions during the audit period.

B. The Supplier's and Customers' Course of Dealing

There is nothing in the record indicating that these customers were agents of the taxpayer, or that the transactions in question were anything other than arms-length sales of special fuel to these customers. All sales were F.O.B. point of origin. All seven customers picked up their purchases with trucks that they owned or hired.

The supplier issued one or more numbered terminal cards to each driver picking up a load of fuel for one of the taxpayer's customers. The driver was to use the card/s to withdraw fuel from the terminal in question. Each card number was linked to a business location of the purchasing customer and also to the destination state for that location. Drivers picking up fuel for customers with multiple locations (e.g., chain-outlet retailers, including several of the customers whose transactions are in issue in this protest) were issued multiple terminal cards. A driver making a pickup would use the card for the customer and (if the customer in question had multiple locations) the location in question, to access the terminal. In addition to the terminal scanner reading the location/destination number on the inserted card, the driver would also manually enter the destination, as well as the product type. The terminal would then dispense fuel into the cargo tank of the driver's truck and create an invoice, and a bill of lading or fuel receipt (hereinafter also referred to as "the shipping paper") for the transaction.

The shipping paper was supposed to indicate the state of destination with a two-letter abbreviation corresponding to those used by the United States Postal Service. However, some shipping papers nevertheless did not clearly indicate a destination state. In the case of Customer A the bill of lading or fuel receipt indicated a destination state of "XX," i.e. did not indicate a destination state. Shipping papers issued to Customers B and C indicated two destination states, one being the state in which the terminal from which they got the fuel was located and the other being shown as "IN" for Indiana. The shipping paper for the single assessed transaction the taxpayer had with Customer E, and all of the shipping papers the auditor examined for transactions between the supplier and Customer F, indicated a destination state of "XX" with "IN" penciled in.

C. The Taxpayer's Sales Records

When the supplier processed the invoice, its computer system would assign a terminal number, a state code for the customer's location and a number for the fuel's destination. From this data the taxpayer would prepare reports indicating, by customer, the locations of the points of origin and destination for each shipment. The supplier used these reports to prepare its special fuel tax returns. However, the former corporate partner that assumed responsibility for the taxpayer's outstanding audits at the time of dissolution did not retain hard copies of these reports, keeping only a data file copy or copies. The contact person for the audit in issue in this protest, the excise tax manager of that former partner, could not access the data file/s, and there was no programmer available to do so. In addition, by the time of the audit, all of the supplier's former tax compliance personnel had taken positions with other businesses.

D. The Audit and Proposed Assessment on the Additional Imports

The auditor compared the special fuel sales schedules supporting the returns the taxpayer filed for the states where the terminals were located with its Indiana Schedules 2x (Gallons Received from Distributor on Exchange) and Schedules 3 (Gallons Imported Via Truck, Barge or Rail, Tax Unpaid) for the audit period. The adjoining states' schedules indicated sales to customers with multiple customer numbers, but the numbers of themselves did not indicate the respective destination states of the various shipments. As noted above, there was neither a remaining hard copy of a master list indicating the respective destination states of each customer's special fuel shipments, nor any compliance personnel of the supplier available with whom to discuss the matter. The auditor therefore was unable to reconcile the adjoining states' special fuel sales schedules with the Indiana Schedules 2x and 3 and inferred that additional untaxed special fuel might have been imported into Indiana.

Accordingly, the auditor asked for and reviewed bills of lading for Customers A, B, D, E, F and G. After having done so, at what was to have been the final audit conference with the taxpayer's contact person, the auditor advised that the Department would be assessing the supplier tax on transactions with these customers. The reasons she gave were the deficient identification of the

destination state on the reviewed bills of lading issued to Customers A, B, D and F, and that gallons imported by Customer G had been underreported on Indiana Schedule 3. The auditor instructed the taxpayer's contact person to locate any source documents that would show an exact destination for sales made to Customers A, B and D, the three customers whose fuel purchases formed the bulk of the import adjustment. The auditor at that time also scheduled an additional week of fieldwork to review additional source documents. During that week the supplier's contact person submitted to the auditor printouts of invoices the taxpayer had issued to Customers A, B, D, E and G, all of which purported to show that the respective fuel shipments in question had been shipped to states other than Indiana. At the second final conference the auditor rejected the invoices issued to Customers A, B and D as proof because they suffered from the same deficiencies as the respective bills of lading issued to these customers, and the invoice issued to Customer G showed an Indiana destination. The taxpayer's contact person did not, and as of the date this letter was issued the supplier still had not, submitted source documents to the Department showing clear destination states for the fuel shipments in question.

Based on the auditor's findings, the Department proposed an adjustment that would assess the supplier for special fuel tax on all shipments having bills of lading that indicated a destination state of "XX." In addition, the adjustment included special fuel tax on all shipments of such fuel for which the bill of lading showed an Indiana destination, either alone, by the taxpayer having changed a machine-printed "XX" destination on a bill of lading to Indiana by interlineation, or in combination with a destination in another state. Lastly, the assessment included fuel the taxpayer had sold to Customer G but had failed to report on its Indiana Schedule 3. The proposed assessment also included a separate adjustment assessing special fuel tax on certain other underreported gallons of special fuel not in issue here. One of the supplier's former corporate partners timely protested the additional taxable gallons adjustment on its behalf, and the Department held a telephone conference on the protest.

E. Documents Submitted During the Protest

In support of its original protest letter, the taxpayer submitted photocopies of pages from printouts of sales to in-state customers that purportedly supported one fuel tax return the supplier filed during the audit period with each of the three adjoining states. Each such printout page itemized the supplier's sales by customer name. They each included one of the customers for whose fuel purchases the Department had proposed to assess special fuel tax, and identified each such customer as having a fuel tax license issued by the adjoining state in question. The taxpayer highlighted one or two transactions on each such printout page and included copies of the respective bills of lading for those transactions. One of those bills of lading was for a sale to Customer C and gave a dual destination of Indiana and the adjoining state in which the terminal from which Customer C got the fuel was located. The other bills of lading all gave the destination state as being "XX."

After the Department conducted the telephonic conference on this protest, the supplier submitted a post-conference letter summarizing its position. Along with that letter the taxpayer submitted copies of statements purporting to be from Customers A, B, D, F and G. The statements did not appear to be copies of any source business records, or any other authenticated writings, of these respective customers. The Department therefore presumes that these documents were prepared for purposes of this protest. Although an officer of each customer purportedly signed the statement in question, none of the statements was under oath. Each statement purported to summarize transactions the customer in question had had with the supplier for sample months of the audit period. All of the purported statements used sample months that were after the taxpayer had submitted its Form SF-10A and made its election to precollect special fuel tax, except for the purported statement of Customer F, which covered both the first quarter of 1994 (pre-election) and August 1994 (post-election).

With one exception, the statements purporting to come from Customers A, B, D and F represented that the respective fuel shipments appearing on those statements had been delivered to destinations outside Indiana. That exception again appears on the purported statement of Customer F, which represents that one shipment in March 1994 had an Indiana destination and was reported on its special fuel tax return for that month. The statement purporting to be from Customer G shows that the deliveries listed were made to Indiana, but that a substantial fraction of those shipments allegedly consisted of nontaxable kerosene. The Department will provide additional facts below in the Discussions of the respective issues if and as needed.

I. Special Fuel Tax – Imposition – Taxable Event

Special Fuel Tax – Imposition – Imports – Parties Liable

Tax Administration – Special Fuel Supplier's Duties to Collect/Remit Tax

DISCUSSION

As noted in the Statement of Facts, on June 30, 1994 the supplier executed and submitted to the Department a Tax Precollection Agreement Application (Form SF-10A). It checked Option 1 on that form and thereby "agree[d] to treat all out-of-state terminal removals of undyed special fuel for export into Indiana, as if they were received in Indiana, and [to] collect the Indiana special fuel tax from every purchaser." *Id.* Option 1 tracks, and by electing Option 1 the taxpayer chose to subject itself to, a portion of IC §6-6-2.5-35(j) (1993 and Supps. 1994-97). The General Assembly added subsection (j) to IC § 6-6-2.5-35 in P.L. 18-1994, § 27, 1994 Ind. Acts 423, 440, 443, which took effect July 1, 1994, *id.* at 440. (The General Assembly made no substantive change to IC §6-6-2.5-35(j) during the audit period, although it did make one technical correction to a phrase in this subsection that refers to other sections of IC chapter 6-6-2.5. P.L. 61-1996, § 2, 1996 Ind. Acts 1539, 1542.)

As it read when it took effect, and for the majority of the audit period, IC § 6-6-2.5-35(j) stated in relevant part that:

[A]ny licensed supplier or permissive supplier may make an election with the department to treat all out-of-state terminal removals with an Indiana destination as shown on the terminal-issued shipping paper *as if the removals were received by the supplier in Indiana pursuant to sections 28 and 35(a) of this chapter, for all purposes.*

Id (emphasis added). The definition of "received" in IC § 6-6-2.5-20 (1993 and Supps. 1994-97) states that "[t]he tax imposed under section 28 of this chapter with respect to special fuel removed from terminals within Indiana …, shall be imposed at the same time and in the same manner as the tax imposed by Sections 4081 to 4083 of the Internal Revenue Code [26 U.S.C. §§ 4081-4083 (1994)]." *Id.* The primary taxable event under the current Special Fuel Tax Law, P.L. 277-1993(ss), § 44, 1993 Ind. Acts 4555, 4734-4757, codified as amended at IC chapter 6-6-2.5 (1993 and Supps. 1994-97), therefore occurs when special fuel is "received" as IC § 6-6-2.5-20 defines that word. Removal of special fuel from an Indiana terminal for consumption, use, sale or warehousing, is one of the acts falling within the definition of "received." *Id. Cf.* I.R.C. § 4081(a)(1)(A)(ii) (imposing the federal fuel manufacturer's excise tax on removal of a taxable fuel from any terminal).

Thus, when the present supplier elected Option 1 on Form SF-10A, it chose from that date forward to treat special fuel removed from an out-of-state terminal that had issued a shipping paper showing an Indiana destination *as if it had originally removed that fuel from an Indiana terminal*. The taxpayer thereby also consented to be ultimately liable, as the licensed supplier, for the tax on all special fuel with a shipping paper that showed an Indiana destination and was removed from any out-of-state terminal in which it maintained an inventory position. As quoted above, IC § 6-6-2.5-35(j) treated all of the taxpayer's removals of such fuel (hereinafter "subject special fuel") as being made "pursuant to sections 28 and 35(a) of this chapter, for all purposes." *Id.* IC § 6-6-2.5-28(a) imposes the tax and states that "[t]he tax shall be paid at those times, in the manner, and by those persons specified in this section and section 35 of this chapter." *Id.* IC § 6-6-2.5-28(c) states that "the tax imposed on special fuel by [IC § 6-6-2.5-28](a) …shall generally be determined in the same manner as the tax imposed by Section 4081 of the Internal Revenue Code and Code of Federal Regulations." *Id.* In turn, Temp. Treas. Reg. (26 C.F.R.) § 48.4081-11T(b) (1994-95) stated concerning diesel fuel, and Treas. Reg. (26 C.F.R.) § 48.4081-2(c)(1) (1996-2002) states concerning all taxable fuel, that in general "[t]he position holder with respect to the [, respectively, diesel or taxable] fuel is liable for the [, respectively, diesel or federal fuel manufacturers' excise] tax imposed …." Treas. Reg. § 48.4081-1(m) (1994-95) (current version at Treas. Reg. § 48.4081-1(b) (1996-2002)) defines "position holder" as "the person that holds the inventory position in the taxable fuel, as reflected on the records of the terminal operator." *Id. Accord, see* IC § 6-6-2.5-23 (1993 and Supps. 1994-97) (defining "supplier" in part as being "a person …that owns special fuel in the pipeline and terminal distribution system in Indiana," *id.*). Thus, by electing Option 1 on Form SF-10A, the taxpayer agreed that the Department could treat it as an in-state owner and supplier as to each post-election removal of subject special fuel. It also thereby agreed to be liable for the tax on any such removals.

However, by making its election, the supplier in addition consented to other duties by which it could have shifted, and thereby mitigated, its personal liability for that tax. Specifically, the taxpayer consented to the duties to precollect special fuel tax from its purchasers, and to remit the precollected tax to the Department, that IC §§ 6-6-2.5-28 and -35(a) specify upon a receipt of such fuel. IC § 6-6-2.5-35(a) states that "[t]he tax on special fuel received by a licensed supplier in Indiana that is imposed by section 28 of this chapter shall be collected and remitted to the state *by the supplier who receives taxable gallons*…." *Id* (emphasis added). The first sentence of IC § 6-6-2.5-35(c) elaborates on a supplier's duty to collect, stating that "[a] supplier who sells special fuel shall collect *from the purchaser* the special fuel tax imposed under section 28 of this chapter." *Id* (emphasis added). Finally, IC § 6-6-2.5-28(c) states that "the tax imposed on special fuel by [IC § 6-6-2.5-28](a) shall be measured by invoiced gallons of nonexempt special fuel received by a licensed supplier in Indiana for sale or resale in Indiana …." *Id.* Thus the taxpayer, a licensed supplier, consented by making its election under IC § 6-6-2.5-35(j) that from that date on it would precollect special fuel tax, and remit to the Department the tax precollected, from each purchaser of subject special fuel, measured by the gallons invoiced to that purchaser.

The taxpayer argues that the majority of the additional taxable gallons remained in their respective states of origin, thereby implying that liability for Indiana special fuel tax never attached as to those gallons. The supplier has submitted the unauthenticated statements purporting to be from Customers A, B, D and F in support of its argument. However, that circumstance, even if true, and the purported evidence, even if it were authentic, are irrelevant to the previously discussed subjects of the taxpayer's liability for, and its duties to precollect from its customers and remit to the Department, the special fuel tax. The only questions, and the only evidence, bearing on those subjects on this record, are whether the supplier made a valid, binding election of Option 1 on Form SF-10A pursuant to IC § 6-6-2.5-35(j), and whether the taxpayer left any such election in effect. It has not disputed or offered evidence on either of these points. Since the answer to both questions is therefore "yes," then on these facts the supplier's liability for the tax on each removal of subject special fuel, and its duties to precollect and remit that tax on every such removal, became absolute as a matter of law once the election took effect.

The location of the ultimate destination of each shipment is thus simply irrelevant to the existence of that liability and those duties, which as a matter of simple chronology if nothing else plainly attached as to each shipment at the time of its origin, not of its arrival at its destination. Moreover, the taxpayer had no control over the ultimate destination of the fuel in any case, since there is no evidence in the record that any of the customers were acting as the supplier's agents or that the transactions in question were

anything other than straightforward sales of fuel to those customers. Any entitlements to abatements of special fuel tax due to diversions of shipments from Indiana or failures to print proper destination information on the terminal-issued shipping papers would have arisen only if the customers had paid the taxpayer the special fuel tax on their respective shipments. *See* IC § 6-6-2.5-40(f) (providing a right to claim a refund of special fuel tax in cases where the fuel was diverted or the terminal operator printed improper information on the shipping paper). More importantly, since it was the customers who would have paid the taxes, while the supplier would have merely remitted the taxes it precollected, any rights to claim refunds under such circumstances therefore would have been those of the respective customers, not the taxpayer. *See id* (so implying).

The supplier's argument thus is one that it lacks standing to make, and also relies on later actions of other parties to determine whether the taxpayer's ultimate liability for, and its duties to precollect and remit, tax on the subject special fuel existed in the first place. The Department will not interpret a listed tax statute in such a way as to render it a nullity. Relying on 20/20 hindsight to decide whether the liability, precollection and remittance provisions of IC §§ 6-6-2.5-28 and -35 apply would have exactly that effect on those statutes. Given the consequences of adopting the supplier's position, the Department views it as an attempt by the taxpayer to avoid that liability and those duties that were the consequences of its own election and that it thereby freely chose to assume. The Department must therefore reject the supplier's argument.

Even if the Department were to accept the taxpayer's argument on its own terms, however, the documents it has submitted, and its failure to submit other documents, would cause that argument to fail. As previously noted, the statements purporting to be from Customers A, B, D and F are not regularly maintained business records of those customers, were prepared for the specific purpose of use in this protest and are not under oath or otherwise authenticated. Those circumstances alone render them suspect. In addition, however, the supplier has failed to point to any of its own source records that would persuade the Department that the contents of the purported statements of Customers A, B, D and F were true. Nor is it likely that it can do so, since as of the date of this letter it has still failed to produce source records showing exact destinations for the subject special fuel, as the auditor originally had requested during the fieldwork as to Customers A, B and D. The printouts of invoices issued to Customers A, B, D, E and G that the taxpayer did produce during the third week of fieldwork were insufficient evidence of destination, and therefore did not comply with the auditor's request. They were not "terminal-issued shipping paper[s]" as the Special Fuel Tax Law uses that term, i.e. they were not bills of lading, fuel receipts or equivalent documents. The shipping papers of Customers A, B, D, E and F that the auditor was able to review were deficient; they indicated either that Indiana was the destination or a possible destination, or failed to indicate another state as the sole destination, of the fuel they respectively covered. The bills of lading the supplier submitted in support of its original protest letter suffered from the same deficiencies.

IC § 6-8.1-5-4(a) (1993) states:

> (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, ….

Id. In addition, IC § 6-6-2.5-57(b) (1993) states that "[f]or purposes of reporting and determining tax liability under this chapter, every licensee shall maintain inventory records as required by the department." *Id.* The taxpayer failed in both of these duties, and as a result did not have the records available with which it could have supported its argument. Thus, even if that argument were relevant, the supplier has failed to sustain its burden of proving it. *See* IC § 6-8.1-5-1(b) (1998) (stating that "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.").

However, the taxpayer's liability for the tax on the subject special fuel does not cover the entire audit period. As noted at the beginning of this Discussion, IC § 6-6-2.5-35(j) did not take effect until July 1, 1994, i.e. the beginning of the third quarter of 1994. Since the statute was not in effect for the first two quarters of 1994, the supplier could not have made an election to assume any liability for, or duties to precollect and remit, tax on any special fuel removed from the out-of-state terminals during those quarters. Accordingly, the Department sustains the taxpayer's protest as to this issue to that extent, but only to that extent.

FINDINGS

The taxpayer's protest is sustained in part and denied in part as to this issue. The taxpayer's protest is sustained as to all special fuel tax assessed on fuel removed from the out-of-state terminals and sold to the taxpayer's customers during the first two quarters of 1994, and is denied as to the rest of the audit period.

II. Tax Administration – Special Fuel Supplier's Duties to Collect/Remit Tax

Special Fuel Tax – Imposition – Imports – Payment of Fuel Tax to State of Export

DISCUSSION

In the alternative to its argument that most of the assessed fuel remained in its respective states of origin, the supplier contends that tax was paid on the fuel to those states. However, the taxpayer has not been consistent in contending who paid those taxes. In its original protest letter it implied that its various customers had paid the taxes, offering the copies of printout pages it filed in support of its fuel tax returns with the adjoining states. During the telephonic conference with the hearing officer on this protest, however, the supplier stated that it had paid the taxes to the exporting states. Finally, the unauthenticated statement purporting to be from Customer F states that it paid the tax on one shipment of special fuel on its March 1994 special fuel tax return.

Who, if anyone, paid taxes on the subject special fuel to the states of export, is irrelevant to whether the taxpayer is liable for Indiana tax on the subject special fuel. The Special Fuel Tax Law contains no provisions for granting an exemption from, or credit against, that tax for fuel tax paid to another state on the same fuel. The only provision in that law that even comes close is IC § 6-6-2.5-30(a)(1) (1993 and Supps. 1994-97), which exempts special fuel on which special fuel tax has been paid to another state if that fuel is destined for export to that state, not import into Indiana. Even if the Special Fuel Tax Law did provide for abatement of tax for fuel tax paid to another state, the taxpayer presumably would not have standing to claim such relief if its customers, entities unrelated to the supplier, were the ones who had actually paid such taxes. (The Department notes in this connection that the purported transaction involving Customer F occurred in March 1994, i.e. before IC § 6-6-2.5-35(j) took effect. The taxpayer therefore could not then have been primarily liable for, and could not then have had duties to precollect and remit, tax incurred in connection with any transactions with Customer F in any case.) Nor, presumably, would the supplier have standing to file claims for refund for those taxes in the states of export. The copies of the printouts the supplier submitted in support of its fuel tax returns to the adjoining states are therefore not relevant evidence that the taxpayer is not liable for Indiana special fuel tax.

Accordingly, if the supplier (not its customers) paid fuel taxes on the subject special fuel to the states of export, it would have to claim refunds from those states, not seek an abatement of assessed, unpaid special fuel tax in this state.

FINDING

The taxpayer's protest is denied as to this issue.

III. Special Fuel Tax – Imposition – Status of Taxed Substance as Special Fuel

DISCUSSION

The supplier had reported all of the gallons of fuel sold to Customer G on the taxpayer's schedules of fuel sold to licensed customers filed with the exporting state. However, it reported a lower number of gallons for some of those transactions on its Indiana Schedules 3, and the auditor assessed tax on the difference between the two figures as unreported gallons. The taxpayer now contends that some of the imports of Customer G were not special fuel, but kerosene, and as such not subject to special fuel tax. In support of its argument, it offers the purported statement of that customer.

The definition of "special fuel" in IC § 6-6-2.5-22 (1993 and Supps. 1994-97) does exclude kerosene. *Id.* However, the purported statement from Customer G suffers from the same evidentiary deficiencies described generally under Subsection E of the Statement of Facts and as to Customers A, B, D and F in particular in the Discussion of Issue I above. The Department incorporates those remarks by reference as if fully set out here. In addition, there are no copies of source records in the auditor's workpapers, nor has the supplier submitted any source records, that would corroborate its assertion. Accordingly, the taxpayer has failed to sustain its burden of proof that the unreported gallons it sold to Customer G were nontaxable kerosene. *See* IC § 6-8.1-5-1(b) (1998) (stating that "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.").

FINDING

The taxpayer's protest is denied as to this issue.

DEPARTMENT OF STATE REVENUE

04990350.LOF

LETTER OF FINDINGS NUMBER: 99-0350
Retail Sales Tax, Withholding Tax
For the Tax Periods: 1995 through 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Retail Sales Tax, Withholding Tax – Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-3-4-8, IC 6-8.1-5-1, IC 6-2.5-2-2, *Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995), 11 U.S.C. §507(a)(7)

The Taxpayer disputes the determination that he had a duty to remit the corporation's sales tax and withholding tax.

II. Retail Sales Tax, Withholding Tax – Returned Check

Authority: IC 6-8.1-8-1, IC 6-2.5-9-3, IC 6-8.1-10-5

The Taxpayer disputes the 100% penalty for a returned check.

STATEMENT OF FACTS

Taxpayer was assessed for retail sales and withholding taxes as a responsible officer. Taxpayer was listed as the President of the corporation at the Secretary of State's Office. The Department's records indicate the corporation closed in 1998. Taxpayer subsequently petitioned for Bankruptcy under Chapter 7. More facts will be provided as necessary.

I. Retail Sales Tax, Withholding Tax – Responsible Officer

DISCUSSION

A gross retail (sales) tax is imposed on retail transactions made in Indiana. IC 6-2.5-2-1. While this sales tax is levied on the purchaser of retail goods, it is the retail merchant who must "collect the tax as agent for the state." IC 6-2.5-2-2. Individuals may be held personally responsible for failing to remit any sales tax. Pursuant to IC 6-2.5-9-3:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

In addition, withholding taxes were assessed against the Taxpayer pursuant to IC 6-3-4-8(f), which provides that " [i]n the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

IC 6-8.1-5-1 specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. It is the burden of the taxpayer to prove that the proposed assessment is wrong.

Taxpayer concedes he was President of the corporation, but states that he is not responsible for the tax liabilities. Taxpayer provided the Department with copies of letters and invoices sent to the Secretary of the company and argues that the Secretary is solely responsible. The documents sent contain notes allegedly made by the Secretary and purport to demonstrate that he handled the bills. Taxpayer stated that the Secretary embezzled from the company although no evidence of criminal or civil action against the Secretary was provided. Taxpayer also provided a copy of a Master Demand Business Loan Note for the corporation signed by the Secretary. However, the note also requires Taxpayer to provide an annual personal financial statement.

Pursuant to *Indiana Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995): " The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid". Also, the court stated, "where the individual was a high ranking officer, we presume that he or she had sufficient control over the company's finances to give rise to a duty to remit the trust taxes." *Id.* Here, the Taxpayer held the title of president.

From these facts, the Department must conclude that Taxpayer was properly named a responsible officer. As President, Taxpayer had control and authority over the company's finances to ensure that the trust taxes were paid. Therefore, pursuant to IC 6-2.5-9-3 and IC 6-3-4-8, Taxpayer had a duty to remit the sales and withholding taxes to the State of Indiana.

Taxpayer also provided a copy of Taxpayer's Chapter 7 Bankruptcy. However, the Department has an unsecured priority claim pursuant to 11 U.S.C. §507(a)(7), thus, this does not relieve Taxpayer of his obligation to the State of Indiana.

FINDING

The Taxpayer's protest is denied.

II. Retail Sales Tax, Withholding Tax – Returned Check

Taxpayer protests the assessment for a returned check dated May 7, 1998 made by the corporation. Taxpayer sent in a money order postmarked October 4, 1998 and did not include the 100% penalty. Taxpayer was assessed as a responsible officer for the difference. The liability was paid in March 2000.

Pursuant to IC 6-8.1-8-1, if a person pays a tax liability by check, bank draft, cashier's check, or money order, "the liability is not discharged and the person has not paid the tax until the draft, check, or money order has been honored by the institution on which it is drawn." An individual who is considered a responsible officer is liable to remit sales tax. IC 6-2.5-9-3.

Also, IC 6-8.1-10-5 states:

(a) If a person makes a tax payment with a check and the department is unable to obtain payment on the check for its full face amount when the check is presented for payment through normal banking channels, a penalty of ten percent (10%) of the unpaid tax or the face value of the check, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment with the ten (10) day period, the penalty is increased to one hundred percent (100%) multiplied by the face value of the check or the unpaid tax, whichever is smaller….

Taxpayer missed the 10 day deadline to pay the liability before the liability increased to include the 100% penalty. Thus, when Taxpayer sent in the money order for the original assessment, there remained an outstanding balance created by the addition of the penalty. Consequently, the assessment was valid.

FINDING

The Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04990406
04990540.LOF

LETTER OF FINDINGS NUMBERS: 99-0406; 99-0540
Indiana Gross Retail Tax
For the Tax Years 1987 through 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales Tax Assessments

Authority: IC 6-2.5-2-1; IC 6-2.5-2-1(b); IC 6-8.1-5-1(a); IC 6-8.1-5-1(b); 45 IAC 2.2-4-8; 45 IAC 2.2-4-8(a); 45 IAC 2.2-4-8(b)

Taxpayers argue that the audit erred in assessing their sales tax liability. Taxpayers maintain that the audit either overstated the amount of tax due or that the audit misunderstood that extent and nature of their business transactions.

STATEMENT OF FACTS

Taxpayers, as husband and wife, are in the business of selling certain items to tourists at various festivals. One of these festivals is located within the state. Taxpayer wife sold wood craft items. The audit found that taxpayer husband sold "golf carts and gaming equipment." In addition, taxpayers owned land on which numerous transient vendors also sold tourist items. Taxpayers rented the individual parcels of land – including small display booths – to these other vendors.

Taxpayers have operated their various businesses – to a greater or lesser degree – for the last ten years. During those years, taxpayers failed to file Indiana income tax returns. Except on one occasion, taxpayer's failed to pay sales tax owed to the state. It is uncertain if the taxpayers ever filed federal income tax returns.

The audit conducted an investigation of taxpayers' available business records and assessed the taxpayers for unpaid income and sales taxes. Taxpayers submitted a protest challenging both the extent and the amount of the assessments. An administrative hearing was held, and this Letter of Findings – addressing only the sales tax issues – followed.

DISCUSSION

I. Sales Tax Assessments

Pursuant to IC 6-2.5-2-1, a sales tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is otherwise applicable. The statute requires that, "The retail merchant shall collect the tax as agent for the state." IC 6-2.5-2-1(b). In addition, 45 IAC 2.2-4-8(a) imposes sales tax on income derived from the "renting or furnishing for periods of less than thirty (30) days any accommodation including booths [or] display spaces...."

A. Sales of Craft Items

Taxpayer wife sold craft items to festival tourists. In the absence of other available information, the audit assessed sales tax based on the amount of taxpayer wife's gross income as set out in the taxpayers' pro forma federal returns. The tax was assessed for nine years; 1988, 1989, 1990, 1991, 1992, 1993, 1995, 1996, and 1997. No sales tax was assessed for 1994 because taxpayers made a single payment of sales tax that year.

The taxpayers do not challenge the amount of gross income attributed to taxpayer wife and received during the nine years. Taxpayers do maintain that a certain amount of that gross income was derived from sales which occurred outside the state.

Taxpayers have provided financial information differentiating the amount of income taxpayers received in Indiana from the amount of income received in various other states. The gross income amounts set out in the supplementary information comports with the original information contained in the pro forma federal returns.

The audit report's original conclusions are presumed correct. IC 6-8.1-5-1(b) states in part that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid." Faced with the audit report's original conclusions, "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Id.

Taxpayers have met their burden of demonstrating that a portion of their yearly gross income received from craft sales was earned in states other than Indiana. The sales tax assessment related to taxpayer wife's craft sales should be adjusted to reflect the amount of sales income derived within the state.

B. Sale of Golf Carts and Gaming Machines

The audit determined that taxpayer husband was engaged in selling golf carts and gaming devices (pinball machines) during the Indiana tourist festival. The audit reported that the taxpayers were unable to provide information sufficient to calculate taxpayer husband's income from these sales. Therefore, the audit estimated the amount of sales income and assessed sales tax accordingly. The audit did so under the provisions of IC 6-8.1-5-1(a) which states, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available." As stated above, this "proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid." IC 6-8.1-5-1(b).

Taxpayer husband disagrees with the audit's conclusions and denies that he ever received income from the sale of golf carts and gaming devices. Taxpayers maintain that the golf carts were acquired pursuant to an unsuccessful plan to rent the golf carts to tourists. After the initial plan failed, taxpayer husband states that – with one exception – the golf carts were given away.

In regards to the gaming machines, taxpayers maintain that the devices were actually sold by a third-person. Taxpayers provided evidence purporting to establish that this third-person was in the business of selling the gaming machines. Taxpayers offer the theory that the audit incorrectly assumed taxpayers were selling these items because, on occasion, taxpayers would provide assistance to the third-person.

The audit report – completed in 1999 – stated that between eight and ten auditors worked at the Indiana festival beginning in 1994 and that each of the auditors witnessed taxpayer husband selling golf carts and gaming machines. In addition, the report indicated that all of the auditors from the district office witnessed taxpayer husband selling golf carts and gaming machines each day of ten-day festival. One of the auditors indicated that taxpayer husband offered to sell that particular auditor a golf cart. Finally, the records indicate that the third-person – cited by taxpayers as the individual responsible for actually selling the gaming machines – has never paid Indiana sales tax.

Taxpayers have failed to rebut the presumption of correctness afforded the assessment at issue. The sales tax assessment related to the sale of golf carts and gaming machines will not be abated.

C. Lease Income

Taxpayers own real property at the Indiana tourist festival site. Taxpayers rent small parcels of this land to transient vendors. In 1987, taxpayer owned and rented 11 of these individual parcels. By 1997, taxpayers' holdings had substantially increased, and taxpayer owned more than 100 parcels. Taxpayers reported none of these revenues for income tax or sales tax purposes.

Beginning in 1999, taxpayers were asked to supply copies of the lease agreements with the various vendors. At that time, taxpayers were either unwilling or unable to comply with the repeated requests for copies of the lease agreements. Accordingly, in the absence of contrary information, the audit used taxpayers' pro forma federal returns to determine the taxpayer husband's rental income for 1987 through 1997. On the ground that the parcels were rented for less than 30 days, the audit assessed sales tax on the rental income reported on the federal pro forma returns. The audit assessed sales tax under 45 IAC 2.2-4-8 which states, in relevant part, as follows:

> For the purpose of the state gross retail tax and use tax: Every person engaged in the business of renting or furnishing for periods of less than thirty (30) days any accommodation including booths, display spaces and banquet facilities, in any place where accommodations are regularly furnished for a consideration is a retail merchant making retail transactions in respect thereto and the gross income received therefrom shall constitute retail income from retail unitary transactions. 45 IAC 2.2-4-8(a).

Taxpayers argues that, under 45 IAC 2.2-4-8(b), they are not liable for the sales tax assessment because individual parcels were rented for an entire year. The rule states that, "In general, the gross receipts from renting or furnishing accommodations are taxable. An accommodation which is rented for a period of thirty (30) days or more is not subject to the gross retail tax." Taxpayers maintain that the vendors who rent one of the parcels have access to the site during the entire year. According to taxpayers, the use of the parcels is not confined to a single annual festival but that a number of festivals are held at the same site throughout the year.

Subsequent to the hearing, taxpayers provided copies of lease agreement receipts. Taxpayers provided information attributable to 18 separate agreements, involving six different lessees, spanning the years from 1989 to 1996. The lease receipts state that the agreement term was to run from "November 1 to October 31." The rate schedule specifically refers to a single, 10-day tourist festival but also states that the individual lessee should "let us [the lessors] know if you need electricity for any of the other festivals."

The information provided by taxpayers indicates that the general purpose of the lease agreement was to provide the lessee with a vendor space for the particular 10-day tourist festival. However, the information would also indicate that the lease agreement was for a one-year term and that each lessee was paying for the privilege of using the vendor space for one year. Therefore, under IC 6-8.1-5-1(b), the taxpayers have met their burden of proof necessary to demonstrate that the lease agreements – here at issue – spanned a one-year term. Under 45 IAC 2.2-4-8(b), the income attributable to these agreements was not subject to the gross retail tax. Accordingly, the sales tax assessment should be adjusted to reflect that determination.

FINDING

The taxpayers' protest is sustained in part and denied in part.

DEPARTMENT OF STATE REVENUE

02990553.LOF

LETTER OF FINDINGS NUMBER: 99-0553
Indiana Corporation Income Tax
For Years 1994 to 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana

Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Property Taxes Attributable to Leased Office Equipment – Gross Income Tax

Authority: IC 6-8.1-5-1(b); 45 IAC 1-1-10; 45 IAC 1-1-28

Taxpayer argues that, in calculating its gross income liability, the audit erred in including amounts attributable to the payment of property taxes.

II. Income Derived from Sales of Used Office Equipment – Gross Income Tax

Authority: 45 IAC 1-1-8; 45 IAC 1-1-107

Taxpayer argues that, in determining its gross income tax liability, the audit erred in including amounts attributable to sales of used office equipment.

STATEMENT OF FACTS

Taxpayer is in an out-of-state entity in the business of leasing office equipment such as copiers, computers, printers, and other similar items. Taxpayer purchases this equipment from its parent company, stores the equipment at various warehouses, and operates sales and service offices throughout the United States including an office located in Indiana. The Department conducted an audit of taxpayer's business records resulting in the assessment of additional corporate income tax. Taxpayer disagreed with the audit results and submitted a protest. The Department conducted an administrative hearing, and this Letter of Finding results.

DISCUSSION

I. Property Taxes Attributable to Leased Office Equipment – Gross Income Tax

In reviewing taxpayer's records, the audit concluded that amounts for "the payment of personal property taxes on the leased equipment" should have been included in the calculation of taxpayer's gross income tax liability. Accordingly, the audit made an adjustment to include "personal property taxes."

Taxpayer protested that adjustment arguing that, "In all rental contracts [taxpayer] includes personal property tax as a factor in determining the cost to the customer." Taxpayer believes that the audit incorrectly "added back" the property tax amounts to its rental income and that the audit is "double counting this number." In response, the audit requested that taxpayer substantiate its claim and – to that end – requested a copy of taxpayer's lease agreement. Taxpayer apparently declined to provide the requested document.

At the time of its protest, taxpayer provided a document purporting to establish that taxpayer considers "prop taxes" in calculating lease payments. Taxpayer refers to this document as its "model."

Specifically relevant to taxpayer's own income is 45 IAC 1-1-28 which states that "Rental income is any payment, in cash or other form, for the possession or use of real or tangible personal property for a limited period time. The gross receipts, without any deductions, derived from the lease or rental of real or tangible personal property, whether actually or *constructively received* are taxable at the higher rate...." (*Emphasis added*).

45 IAC 1-1-10 defines "constructive receipts" stating such receipts "are those items of gross income which are not actually received by the taxpayer but which are credited to him, available for his withdrawal, paid to another for his benefit, or represent income to which he is entitled."

It is not disputed that taxpayer retains ownership of the equipment it leases to its customers. It is not disputed that taxpayer is responsible for the payment of any property taxes attributable to the ownership of that equipment. However, it is unclear as to the manner in which taxpayer accounts for the payment of the property tax. Taxpayer's "model" suggests that the cost of the property tax on each item of leased equipment is simply passed along as an undifferentiated portion of the lease charge. For example, taxpayer charges customers $1,200 a year in lease payments, $100 of that amount is designated for property taxes, customer pays taxpayer $1,200 each year, and taxpayer forwards the designated $100 to the taxing jurisdiction. If such is the case, the amount designated as property tax – $100 in the example – is one portion of the taxpayer's rental income under 45 IAC 1-1-28 and is properly included as part of taxpayer's gross income.

However, taxpayer also intimates that the cost of the property tax is "not directly billed to the customer." This suggests that responsibility for payment of property taxes is, by means of the lease agreement, assigned to each individual lessee and that the lessee pays the amount of property tax directly to the local taxing authority. If such is the case, taxpayer may also not be heard to complain because that amount is one portion of the taxpayer's "constructive receipts" as defined under 45 IAC 1-1-10. In such circumstances, the individual lessee pays the property tax assessment for the benefit of the taxpayer.

However, taxpayer raises a third basis for its protest. Taxpayer suggests that the audit "double counted" property taxes by including the property tax when it was included in its gross rental receipts and then counting the same amounts a second time when the property taxes were listed separately in taxpayer's records. Taxpayer has presented nothing which would lead to the conclusion that the audit made such a procedural or factual error. Taxpayer's bare assertion that the audit added an amount of property taxes twice over does not meet its burden of demonstrating the proposed assessment is incorrect. Under IC 6-8.1-5-1(b), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

FINDING

Taxpayer's protest is respectfully denied.

II. Income Derived from Sales of Used Office Equipment – Gross Income Tax

The audit included, as one portion of the taxpayer's gross income, amounts attributable to the sale of used office equipment. Taxpayer challenged this determination arguing that the audit was "double counting this number." Taxpayer provided the audit with a one-page workpaper purporting to establish "How [Taxpayer] Does It." The workpaper suggests that amounts attributable to the disposal of used equipment are listed once as "cash" and once as "sales." This particular workpaper was also provided at the time taxpayer submitted its protest.

The audit concluded that "taxpayer claims that there was no valid sale of the lease equipment but only a book transaction for the disposition of the lease equipment." The audit rejected taxpayer's initial claim that the amounts were "not to be considered as proceeds subject to gross income tax."

45 IAC 1-1-107 provides in part as follows:

> Taxpayers engaged in leasing tangible personal property hold such property as a capital or depreciable asset during the time it is leased. If such assets are sold upon their return to the lessor, or because of the lessee's exercise of an option to purchase, receipts from the sale are taxable at the higher rate. However, if such assets are sold in the regular course of the taxpayer's business, the property has character as inventory and the receipts from the sale are taxable at the lower rate.

By whatever means taxpayer arranges for the sale of the used equipment, under 45 IAC 1-1-107, the audit correctly concluded that those amounts – regardless of "loss on disposal" or "accumulated depreciation" – were one portion of the taxpayer's receipts under 45 IAC 1-1-8.

Again, taxpayer's suggestion that the audit counted the receipts twice is unsupported. There is no indication that the audit counted the receipts found on one page of the taxpayer's records and added that amount to a duplicate record of those same receipts found at another location.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

01990560.LOF

LETTER OF FINDINGS NUMBER: 99-0560
Individual Income Tax
For the Tax Period: 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax – Notification

Authority: IC 6-8.1-5-1, IC 6-8.1-5-2

Taxpayer protests the timeliness of the assessment.

II. Individual Income Tax – Military Service Deduction

Authority: *Davis v. Michigan Department of the Treasury*, 489 U.S. 803, (1989), IC 6-3-2-4, IC 6-8.1-5-1

Taxpayer protests the adjustment to his Military Service Deduction.

III. Individual Income Tax – Residency

Authority: IC 6-3-1-12, IC 6-8.1-5-1

Taxpayer protests being considered an Indiana resident.

STATEMENT OF FACTS

Taxpayer was assessed income tax on his 1997 IT-40 (Indiana full-Year Resident Tax Return) after Taxpayer's Military Service Deduction was adjusted. Taxpayer failed to appear at the hearing. The Letter of Findings is based on information contained in the file. More facts will be provided as necessary.

I. Individual Income Tax – Notification

DISCUSSION

Taxpayer protests the timeliness of the assessment. Taxpayer received the proposed assessment for his 1997 individual income tax return in April 1999.

IC 6-8.1-5-1 states: "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department." Also, IC 6-8.1-5-2(a) states the Department may not issue, unless otherwise provided, a proposed assessment more

than three (3) years after the latest of either the date the return was filed or the due date of the return. In either case, the Department was within the period allowed by law to make the assessment.

FINDING

The Taxpayer's protest is denied.

II. Individual Income Tax – Military Service Deduction

DISCUSSION

Taxpayer's return exceeded the two-thousand dollar ($2,000) deduction allowed for the Military Service Deduction. Taxpayer claims that his military retirement is not taxable. Taxpayer has not demonstrated that he is sixty (60) years of age.

Taxpayer argues that his military retirement income is not taxable pursuant to *Davis v. Michigan Department of the Treasury*, 489 U.S. 803, (1989). In *Davis*, the Supreme Court held that states cannot tax federal pensions while exempting state employee pensions under principles of intergovernmental tax immunities. *Id*. at 817. However, this argument is irrelevant because Indiana does not exempt state employee pensions from taxation.

However, Indiana does offer a deduction for military retirement income. IC 6-3-2-4 states:

> Each taxable year, an individual, or the individual's surviving spouse, is entitled to an adjusted gross income tax deduction for the first two thousand dollars ($2,000) of income, including retirement or survivor's benefits, received during the taxable year by the individual, or the individual's surviving spouse, for the individual's service in an active or reserve component of the armed forces of the United States, including the army, navy, air force, coast guard, marine corps, merchant marine, Indiana army national guard, or Indiana air national guard. However, a person who is less than sixty (60) years of age on the last day of the person's taxable year, is not, for that taxable year, entitled to a deduction under this section for retirement or survivor's benefits.

"The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b). Taxpayer has not demonstrated that he has met the age requirement and regardless of his age, has exceeded the $2,000 limit for the deduction.

FINDING

Taxpayer's protest is denied.

III. Individual Income Tax – Residency

DISCUSSION

Taxpayer states that he was not a resident of Indiana during the period in question because he was serving in the military. Taxpayer filed a Full Year Resident return (IT-40) for 1997. IC 6-3-1-12 defines a resident to include "(a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state..." "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b).

Taxpayer signed and sent in a 1997 IT-40. Taxpayer has conceded to being an Indiana resident and has not provided any evidence to overturn his assertion.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02990654.LOF

LETTER OF FINDINGS NUMBER: 99-0654
Adjusted Gross Income Tax – Unitary Filing Status
Fiscal Years 1996 and 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax – Unitary Filing Status

Authority: *Mobil Oil Corporation v. Commissioner of Taxes of Vermont*, 445 U.S. 425, 100 S.Ct. 1223 (1980); *Exxon Corp. v. Department of Revenue of Wisconsin*, 447 U.S. 207, 100 S.Ct. 2109 (1980); *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 102 S.Ct. 3103 (1982); *F.W. Woolworth v. Taxation and Revenue Department of New Mexico*, 458 U.S. 354, 102 S.Ct.

3128 (1982); *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992); *Container Corp. v. Franchise Tax Board*, 463 U.S. 159, 180, n. 19, 103 S.Ct. 2933, 2948, n. 19 (1983); IC 6-3-2-2(l); IC 6-3-2-2(p); IC 6-3-2-2(q); 35 ILCS 5/1501(a)(27); Tenn.Code Ann. § 67-4-2004(25)(B)

Taxpayer protests the Audit Division's subsequent disallowance of unitary combined filing status, for purposes of the taxpayer's combined adjusted income tax return for fiscal years 1996 and 1997, on the basis that the combined return inaccurately reported taxpayer's Indiana source income.

II. Adjusted Gross Income Tax – Unitary Filing Status – Retroactive Withdrawal of Permission to File Unitary

Authority: IC 6-3-2-2

Taxpayer claims that if the Department finds that it does not qualify to file on a unitary basis with its parent corporation and the members of the recreational vehicle group for Indiana tax purposes, then alternatively taxpayer and the original members of the recreational vehicle group that filed Indiana tax returns for the tax years in question should have been allowed to file on a consolidated basis with the parent corporation. As such, taxpayer protests the Audit Division's retroactive withdrawal of its grant of permission to allow taxpayer and the original members of the recreational group that filed Indiana tax returns to file unitary combined returns.

III. Adjusted Gross Income Tax – Consolidated Returns

Authority: None

Taxpayer claims that the Department erred in requiring taxpayer and the five additional members of the recreational vehicle group that filed Indiana tax returns to file separate tax returns.

IV. Adjusted Gross Income Tax – Throwback Sales

Authority: *Wisconsin Department of Revenue v. William Wrigley Jr. Co.*, 505 U.S. 214, 112 S.Ct. 2447 (1992); *Indiana Dept. of State Revenue v. Continental Steel Corp.*, 399 N.E.2d 754 (Ind. Ct. App. 1980); IC 6-3-2-2; IC 6-8.1-5-1; 45 IAC 3.1-1-64; Public Law 86-272 (15 U.S.C.A. §381-385)

Taxpayer raises for the first time at hearing the following issue: whether taxpayer and the original members of the recreational group that filed Indiana tax returns erred in classifying sales to states other than Indiana as throwback sales.

STATEMENT OF FACTS

Taxpayer's parent corporation (hereinafter, "Parent") is a holding company for various companies located in the United States and Canada which manufacture recreational vehicles. By a letter dated August 25, 1995, Parent petitioned the Department of Revenue for permission to file a combined return with all fourteen of its recreational vehicle subsidiaries (hereinafter referred to collectively as the "RV Subsidiaries") based upon the premise that they formed a unitary group. In its petition, Parent maintained that the RV Subsidiaries were one hundred percent (100%) owned by Parent; that the entities are all engaged in the same line of business; that the entities share common directors and common management; and, that filing separate company returns would not fairly reflect Indiana income.

In a letter dated October 10, 1995, and based upon the information submitted by Parent, the Indiana Department of Revenue granted Parent's petition to file unitary combined returns as a unitary group with five of the fourteen RV Subsidiaries for fiscal year 1995 forward. Specifically, the Department found that Parent and the five members of the RV Subsidiary that filed Indiana income tax returns met the unity requirements through their unity of ownership, centralized management, and centralized financial, administrative and operational services. (*See Department of Revenue-Tax Policy Division Letter* dated October 10, 1995, page 2). The Department further found that Parent and the five subsidiaries met the "best method for reporting adjusted gross income" test through their shared industry impact on Indiana adjusted gross income and their non-arms length transactions. *Id*. The Department determined that the remaining nine subsidiaries could not be included in the unitary group or taxed by Indiana because they did not have sufficient contacts with the state of Indiana. Although the Department granted Parent's request, in part, to file unitary, it nevertheless, reserved the right to revoke its grant of permission for unitary combined filing in the event that, *inter alia*, the facts subsequently established by the Department disclosed material error or misrepresentation of the facts set forth in Parent's original petition. (*See Department of Revenue-Tax Policy Division Letter* dated August 30, 1995, page 3).

In a letter dated March 2, 1996, Parent re-petitioned the Department for permission to file combined returns with all of the RV Subsidiaries. In its letter dated March 20, 1996, the Department denied Parent's second petition, and reiterated that permission was granted for only five of the fourteen subsidiaries. Thereafter, Parent filed unitary combined returns including the five subsidiaries beginning in the fiscal year ending July 31, 1995.

In 1998, Parent amended its 1995 and 1996 Indiana tax returns to expand its combined filings to include all fourteen of its RV Subsidiaries. Parent based its amended returns on its position that the Department had erroneously failed to grant it permission to file combined Indiana income tax returns with the RV Subsidiaries.

The "taxpayer" in the instant case is an Indiana subsidiary of Parent and one of the five RV subsidiaries originally permitted to be included in the combined filings. The audit of taxpayer stems from an audit that was performed on the combined filings of Parent and its RV Subsidiaries for fiscal years 1995 through 1997 (which included the 1995 and 1996 amended returns). The disallowance of Parent's combined filings resulted in separate filing reports being generated for the subsidiaries that were originally granted permission to be included in the combined filing. The audit of taxpayer is of one such separate filing.

Pursuant to the audit performed on taxpayer, the auditor found that the expenses incurred by Parent on behalf of its subsidiary were properly reflected in the books of the subsidiary. As such, the Department determined that the Indiana income of taxpayer was more fairly reflected by filing separate company returns.

I. Adjusted Gross Income Tax – Unitary Filing Status

DISCUSSION

The taxpayer (*i.e.*, one of the RV Subsidiaries that filed Indiana income tax returns and was originally permitted to be included in the combined filings) protests the Department's determination that it may not file unitary combined returns for the fiscal years in question. Taxpayer argues that the combined reporting is the only filing method that fairly represents the flow of value from functional integration, centralized management, and economies of scale, present between taxpayer, Parent, and the remaining RV Subsidiaries.

In addressing this question, we examine: (1) whether a unitary relationship actually existed between Parent, taxpayer, and the remaining RV Subsidiaries; and (2) whether filing a combined return would more fairly represent the Parent's, taxpayer's, and remaining RV Subsidiaries' Indiana income. Hereinafter, the remaining RV Subsidiaries will be collectively referred to as the "RV Group".

The Supreme Court over the years has developed a three-part test in determining whether a unitary relationship exists: common ownership, common management, and common use or operation. *See, e.g., Mobil Oil Corporation v. Commissioner of Taxes of Vermont*, 445 U.S. 425, 100 S.Ct. 1223 (1980); *Exxon Corp. v. Department of Revenue of Wisconsin*, 447 U.S. 207, 100 S.Ct. 2109 (1980); *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 102 S.Ct. 3103 (1982); *F.W. Woolworth v. Taxation and Revenue Department of New Mexico*, 458 U.S. 354, 102 S.Ct. 3128 (1982); *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992). The first item to be considered under this three-part test is common ownership. As a general rule, at least fifty percent (50%) of a corporation's stock must be commonly owned (either directly or indirectly) in order for a corporation to be considered part of a unitary business. *See, e.g.*, 35 ILCS 5/1501(a)(27) and Tenn.Code Ann. § 67-4-2004(25)(B). The information in taxpayer's file shows that during the audit period Parent owned one hundred percent (100%) of the stock of taxpayer and the members of the RV Group. The evidence of file is sufficient to establish common ownership.

The second criteria to be considered is common management. Common management is shown when the parent corporation provides a management role that is grounded in the parent's own operation expertise and overall operational strategy. *See, e.g., Container Corp. V. Franchise Tax Board*, 463 U.S. 159, 180, n. 19, 103 S.Ct. 2933, 2948, n. 19 (1983).

Here, the taxpayer has supplied evidence which shows that Parent exercised control and influence over it and the RV Group. Parent's upper management consisted of a CEO, a Chairman and Treasurer, and a Vice President of Finance and Chief Administrative Officer. These three individuals were responsible operationally for taxpayer and the entire RV Group. Taxpayer and each one of the entities in the RV Group were required to submit to Parent's upper management for review and comment daily sales reports, monthly and annual financial reports, and operating and budget plans and goals. The CEO of Parent approved all capital expenditures in excess of one thousand dollars ($1000.00). Common management existed between Parent, taxpayer, and the RV Group.

The third test is that of common operation or use. Evidence of a common operation exists where certain functions are performed for the group by the parent (such as purchasing, financing, advertising, marketing, research, tax compliance, insurance, and pension plan management) which independent companies would perform for themselves.

In the taxpayer's case, information was supplied which shows that many of the administrative, management, and financing functions for taxpayer and the RV Group were centralized. Parent's upper management employed a purchasing agent who was responsible for negotiating national supply contracts for the RV Group. Upper management selected the independent accountants, legal counsel, and insurance carriers that provided accounting, legal and insurance services to the RV Group. Parent's upper management also coordinated the administration of the employee benefits plan for the RV Group. Upper management purchased advertising space in various recreational vehicle trade magazines for the RV Group, and the entities of the RV Group often participated in joint presentations.

On the basis of these facts, it appears that taxpayer enjoyed a unitary relationship with Parent and the RV Group. There exists the elements of common ownership and management, and a modicum flow of value between the members of the business group. Using Parent's upper management to provide services for the RV Group that the taxpayer and the RV Group could have provided for themselves, resulted in common operation.

We now turn to the next point of analysis and the question of whether requiring taxpayer and the RV Group to use a standard apportionment or separate company filing method, instead of combined return filing, would result in a distortion of the income Parent reported as Indiana source income. Ultimately, this question requires us to determine whether, under all of the circumstances of the unitary relationship between Parent, taxpayer, and the RV Group, standard apportionment fulfills the statutory purpose of avoiding distortion of and realistically portraying Indiana source income. *See* IC 6-3-2-2(p).

Although IC 6-3-2-2(q) allows a parent corporation to petition the Department to file a combined return, it also incorporates by reference the restrictions imposed on alternative methods of reporting adjusted gross income by subsection (l) of that same section. Subsection (l) states in pertinent part:

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

...

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

It is clear from the language in subsection (l) that the standard apportionment and the separate accounting filing methods are the preferred methods of representing a taxpayer's income derived from Indiana sources. Other methods of income allocation and apportionment (including the combined reporting method) should only be allowed when those provided for by IC 6-3-2-2 do not fairly reflect a taxpayer's Indiana income. As stated in a more concise manner, if the Indiana source income in the instant case can be fairly represented on the basis of standard apportionment or separate accounting, then such filing methods should be used.

Despite the finding of a unitary relationship between Parent, taxpayer, and the RV Group, and despite the relationship between the business operations of the entities, it does not appear that the operations of the businesses were so integrated to the point where the filing of separate returns would lead to a distortion of income. The evidence on file establishes that inter-company accounts existed for inter-company transactions between Parent, taxpayer, and the RV Group. Interest was paid and received by Parent on these accounts. The balance of the amounts contained in the inter-company accounts consisted of the earnings and profits of taxpayer and the members of the RV Group. Taxpayer and the members of the RV Group were required to remit to Parent at the end of each fiscal year any and all earnings and profits. If taxpayer or a member of the RV Group was unable to remit its profits for the year, Parent charged the entity interest on the unpaid amount. The delinquent entity paid an interest rate of prime plus one percent (1%).

Additionally, the evidence on file substantiates the finding that Parent was compensated for the services that it performed for taxpayer and the members of the RV Group. The expenses incurred by Parent were allocated to the appropriate entity receiving the benefit. As such, the expenses were properly reflected on each subsidiary's financial statements.

The extensive documentation presented by taxpayer does not demonstrate that the business operations of Parent, taxpayer, and the members of the RV Group were so interconnected that it becomes impossible to accurately determine the Indiana source income attributable to the respective entities.

FINDING

Taxpayer's protest is denied.

II. Adjusted Gross Income Tax – Unitary Filing Status – Retroactive Withdrawal of Permission to File Unitary

DISCUSSION

Taxpayer next argues that it and the original members of the recreational vehicle group that filed Indiana tax returns for the tax years in question should have been allowed to file on a unitary basis with the parent corporation. As such, taxpayer protests the Audit Division's retroactive withdrawal of its grant of permission to allow taxpayer and the original members of the recreational group that filed Indiana tax returns to file unitary combined returns without a finding of some material misstatement of fact.

In a letter dated October 10, 1995, the Department of Revenue granted Parent's petition to file unitary combined returns as a unitary group with five of the fourteen RV Subsidiaries for fiscal year 1995 forward. However, pursuant to an audit of Parent that resulted in the disallowance of Parent's filing on a combined basis with its subsidiaries, Parent was required to generate separate taxed returns for all of its subsidiaries, including the taxpayer and the subsidiaries with which Parent was originally granted permission to file on a unitary basis.

The statute applicable to the permission issue is found in IC 6-3-2-2 which states in pertinent part that:

IC 6-3-2-2 Corporations and nonresidents; "adjusted gross income derived from sources in state" defined...

> (l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana...
>
> (q)... taxpayers may petition the department... for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

(*See Department of Revenue-Tax Policy Division Letter* dated October 10, 1995, page 1).

The Department's grant of permission to file combined returns was a determination, based upon the facts available to the Department at the time, upon which taxpayer's parent corporation could rely. However, the Department did reserve the right to revoke the grant of permission if, *inter alia*, "the facts subsequently established by the Department disclose material error or misrepresentation to the facts set forth in this petition." (*See Department of Revenue-Tax Policy Division Letter* dated October 10, 1995, page 3). This right of revocation was clearly set forth in the letter to Parent. And, the language of the letter clearly warned Parent that should a subsequent audit reveal a misrepresentation of the facts set forth originally, permission to file combined returns would be revoked.

The evidence on file evinces that the Department granted permission to Parent to include certain subsidiaries in a combined filing based upon an assertion made by Parent in its original petition letter dated August 25, 1995. In this letter, Parent stated that, "Management fees are not paid by the subsidiaries to [Parent]. [Parent] is not a profit center; therefore, no income is recognized by

[Parent] from services provided to its subsidiaries." (*See Parent's Original Petition Letter* dated August 25, 1995, page 4). Upon examination of the facts purported by Parent in its petition, and pursuant to the audit, the auditor discovered inter-company transactions (including management services) that were provided by Parent to its subsidiaries at arm's length.

Notwithstanding the foregoing, we do not believe that the Audit Division's subsequent reversal of the Department's determination that taxpayer could file combined tax returns was due to a material error or misrepresentation. The original approval letter specifically stated that combined filing status would be revoked if a material error or misrepresentation was discovered. However, through its examination of the books, records, and property of taxpayer, and its determination that separate filing best represented the taxpayer's Indiana income, Audit did not discover any material error or misrepresentation on the part of taxpayer.

Upon review of the instant case, the Department concludes that the original approval letter granting taxpayer permission to file combined tax returns is in error, but was not the result of a material error or misrepresentation on the part of taxpayer in the application process. Therefore, the appropriate remedy is for taxpayer's combined filings with the five RV subsidiaries originally permitted to be included in the combined returns for the years in question to be allowed.

FINDING

Taxpayer's protest is sustained. Taxpayer's combined returns with the five RV subsidiaries originally permitted to be included in the combined returns for the tax years in question will be allowed. However, taxpayer's permission to file combined tax returns with the five RV subsidiaries originally permitted to be included in the combined returns is revoked for tax years beginning after the date of the audit report.

III. Adjusted Gross Income Tax – Consolidated Returns

DISCUSSION

Taxpayer next protests the Audit Division's determination that taxpayer and the members of the recreational vehicle group that filed Indiana tax returns were required to file separate filing reports for fiscal year ends 1995 through 1997. Taxpayer maintains that it should have been allowed to file consolidated returns with the members of the recreational vehicle group that filed Indiana tax returns for fiscal year ends 1995 through 1997, and with Parent for fiscal year ends 1996 and 1997. According to taxpayer, the filing of consolidated returns is the only way to fairly reflect taxpayer's and the subsidiaries' Indiana source income.

As we have already granted taxpayer permission to file combined tax returns with the five RV subsidiaries originally permitted to be included in the combined returns for the tax years encompassed by the audit, this question is moot.

FINDING

Taxpayer's protest is denied.

IV. Adjusted Gross Income Tax – Throwback Sales

DISCUSSION

During the audit period, taxpayer and the subsidiaries that filed Indiana tax returns classified sales of recreational vehicles and parts to customers outside of Indiana (*i.e.*, recreational vehicle dealers and other subsidiaries) as throwback sales. According to taxpayer, it and the subsidiaries were under the mistaken belief that they were not subject to income tax in states other than Indiana, Ohio, and Michigan. Taxpayer believes that because it and the subsidiaries clearly had nexus activity in all the states where the recreational vehicles dealers are located (hereinafter, the "Dealers"), sales destined to those particular states should not have been classified as throwback sales.

Sales made by Indiana corporations to out-of-state purchasers must be apportioned as income to Indiana if the state in which the purchaser resides is without legal authority to claim such income as its own. *See* IC 6-3-2-2(e) and 45 IAC 3.1-1-64. Specifically, if interstate sales are "taxable in another state" - *i.e.*, the state of the purchaser - the sales are not includible in the numerator of the Indiana sales factor. Such sales are defined as throwback sales.

According to IC 6-3-2-2(n):

For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

Indiana's regulatory language further defines "taxable in another state." 45 IAC 3.1-1-64 states in part:

A corporation is "taxable in another state" under the Act when such state has jurisdiction to subject it [the corporation] to a net income tax. This test applies if the taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provision of Public Law 86-272, 15 U.S.C.A. §381-385.

The taxpayer bears the burden to prove that an assessment by the Department is invalid. IC 6-8.1-5-1.

In *Wisconsin Department of Revenue v. William Wrigley Jr. Co.*, 505 U.S. 214, 112 S.Ct. 2447 (1992), the United States Supreme Court interpreted the term "solicitation" for purposes of P.L. 86-272, the federal law that generally exempts a corporation from state income tax if the company's only activity in the state is solicitation of sales of tangible personal property. Wrigley also established that a *de minimis* amount of nonsolicitation activity will not cause a corporation to lose its exemption from state taxation

under P.L. 86-272. In *Wrigley*, the Court found that activities ancillary to the solicitation of orders would not result in a loss of immunity to taxation. Additionally, the Court held that as long as an activity, or activities, did not establish a nontrivial, additional connection with the taxing state it is sufficiently *de minimis* to avoid taxation. (*See also, Indiana Dept. of State Revenue v. Continental Steel Corp.*, 399 N.E.2d 754, 759 (Ind. Ct. App. 1980), where the court set out examples of activity which exceeded "mere solicitation" including "giving spot credit, accepting orders, collecting delinquent accounts and picking up returned goods within the taxing state, collecting deposits and advances on orders within the taxing state, pooling and exchanging technical personnel in a complex mutual endeavor, maintaining personal property... and associated local business activity for purposes not related to soliciting orders within the taxing state.")

The records and evidence presented to the Department lead to the conclusion that taxpayer and the Indiana subsidiaries contracted with Dealers outside of Indiana to perform warranty repair services. Periodic visits made by the employees of taxpayer and the Indiana subsidiaries to other states were to brief Dealers' on the products and the distinguishing features of the products in comparison with competitor's products, and to generate new business and to insure future sales of the products. These activities are all protected as ancillary to solicitation and would not subject taxpayer or any of the Indiana subsidiaries to taxation in other states. The few visits made by employees to brief Dealers on the products could be construed as *de minimis*. The Department concludes that taxpayer has not proven that it is subject to taxation in other states, and that the throwback of sales shipped to the other states were properly added into the numerator of the sales factor.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220000373.LOF

LETTER OF FINDINGS NUMBER: 00-0373
Indiana Corporate Income Tax
For the Tax Years 1996, 1997, and 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Telephone Cooperative's Addback of Taxes Attributable to Patronage Income – Adjusted Gross Income

Authority: 45 IAC 3.1-1-8; 45 IAC 3.1-1-8(3)(a), (b); I.R.C. § 164; I.R.C. § 277

Taxpayer argues that income and property taxes, attributable to income received from its own patrons, should not be added back in calculating its Indiana adjusted gross income.

II. Abatement of the Ten percent Negligence Penalty

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c); 45 IAC 15-11-2(c)(1), (4)

Taxpayer maintains that – based upon the particular nature of taxpayer's business and the tax questions unique to that business – it is entitled to an abatement of the ten percent negligence penalty assessed at the time of the original audit.

STATEMENT OF FACTS

Taxpayer is a telephone cooperative in the business of providing telephone service to several Indiana communities. Taxpayer receives income from "patrons" and from "non-patrons." Until 1993, taxpayer was classified as a tax-exempt entity under I.R.C. § 501(c)(12). However, beginning in 1994, taxpayer no longer qualified as a tax-exempt entity because it no longer received 85 percent of its income from patrons. Thereafter, taxpayer filed as a "non-exempt cooperative" differentiating between income received from patrons and income received from non-patrons.

The Department of Revenue (Department) conducted an audit of taxpayer's 1996, 1997, and 1998 financial records and tax returns. In calculating the taxpayer's adjusted gross income tax, the audit added back income and property taxes attributable to obtaining its patronage income. As a result, the Department determined that taxpayer owed additional state income tax. The taxpayer disagreed with the audit's methodology arguing that only those income and property taxes associated with non-patronage income should be added back; the income and property taxes associated with the patronage income should not have been added back. Taxpayer submitted a protest challenging the audit's methods and the consequent additional tax assessments. An administrative hearing was held, and this Letter of Findings results.

DISCUSSION

I. Telephone Cooperative's Addback of Taxes Attributable to Patronage Income – Adjusted Gross Income

Taxpayer failed to qualify as a tax exempt organization under I.R.C. § 501 because it no longer received 85 percent of its income from its patron members. Thereafter – pursuant to I.R.C. § 277 – in reporting its income for federal income tax purposes,

taxpayer differentiated between income and expenses attributable to its patrons and the income and expenses attributable to its non-patrons. The bottom-line effect of this distinction is that taxpayer paid federal income tax on that portion of its income received from its non-patrons and did not pay taxes on income received from its patrons.

In a substantially simplified manner – and as far as relevant to the issue raised by the taxpayer – taxpayer calculates its federal adjusted gross income tax in the following manner.

In the first step – and for the purposes of this illustration – assume that taxpayer received $5,000 in gross receipt income from its patrons but also paid $1,000 in gross income and property taxes attributable to the acquisition of the $5,000. On its federal return, taxpayer would be entitled to deduct the $1,000 from the $5,000 yielding $4,000 in patronage "taxable income."

In the second step, assume also that taxpayer also received $2,500 in non-patronage income and paid $300 in gross income and property taxes attributable to acquisition of that particular non-patronage income. On its federal return, taxpayer would again be entitled to deduct the $300 yielding $2,200 in "taxable income" from its non-patronage members.

In the third step, taxpayer returns to the original gross receipts – the $5,000 and the $2,500 – to arrive at "total income" of $7,500. However, in arriving at its final "taxable income," taxpayer is entitled to deduct the $4,000 in patronage "taxable income" from the "total income." The consequence is that taxpayer has $3,500 in bottom line, federal taxable income. In summary, after deducting the associated property and gross income taxes, taxpayer does not pay federal adjusted gross income tax on the remaining patronage income – the $4,000 noted above.

As illustrated previously, the Department does not challenge the taxpayer's federal methods or calculations. The dispute arises when taxpayer adapts those same calculations in arriving at its Indiana adjusted gross income tax.

In calculating taxpayer's Indiana adjusted gross income, taxpayer begins with the federal adjusted gross income (the $3,500 cited in the example above) and then makes certain adjusted adjustments. Specifically, 45 IAC 3.1-1-8 states as follows:

"Adjusted Gross Income" with respect to corporate taxpayers is "taxable income" as defined in Internal Revenue Code section 63 with three adjustments.

(1) Subtract income exempt from tax under the Constitution and Statutes of the United States.

(2) Add back deductions taken pursuant to Internal Revenue Code section 170 (Charitable contributions);

(3) Add back deductions taken pursuant to Internal Revenue Code section 63 for:

(a) Taxes based on or measured by income levied at the state level

...

(b) Property taxes levied by a political subdivision of any state; and

(c) Indiana motor vehicle excise taxes, except for that portion of the tax not considered an ad valorem tax.

The dispute arises from the Indiana provision which requires the state taxpayer to add back "property taxes" and "taxes based on or measured by income." 45 IAC 3.1-1-8(3)(a), (b).

Taxpayer argues that it is required to add back only those property and gross income taxes associated with the non-patronage income. In the example above, taxpayer maintains that it would begin with $3,500 and add back the $300. As a result, taxpayer would have $3,800 in Indiana adjusted gross income.

The audit maintained that taxpayer is required to add back those property and gross income taxes associated with the non-patronage income *and* the property and gross income taxes associated with the patronage income. In the example above and employing the audit's proposed method, the taxpayer would start with the $3,500, add back the $300, and *also* add back the $1,000. As a result of the two additions, taxpayer would have $4,800 in Indiana adjusted gross income.

In support of its argument, taxpayer maintains that the starting point for determining the states adjusted gross income is non-patronage taxable income; in effect, the patronage sourced gross income tax and the property tax were never a component of the federal taxable income. According to taxpayer, "It simply is not logical to add back expenses that were never deducted in the first place. To do so creates phantom income."

Taxpayer is not required to pay federal income tax on income received from its patrons. I.R.C. § 277 states, in relevant part, as follows:

In the case of a social club or other membership organization which is operated primarily to furnish services or goods to members and which is not exempt from taxation, deductions for the taxable year attributable to furnishing services, insurance, goods, or other items of value to members shall be allowed only to the extent of income derived during such year *from members or transactions with members*." (*Emphasis added*).

As a "membership organization" which functions to provide its patrons with telephone services, taxpayer is clearly permitted to "deduct" the income received from those patrons. Equally clear is that 45 IAC 3.1-1-8 does not require taxpayer to add back the total patron income in determining its Indiana adjusted gross income.

In addition, taxpayer – along with every other taxpayer – is entitled to deduct state and local real or personal property taxes and state and local income taxes. I.R.C. § 164 states in part that:

Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(1) State and local, and foreign, real property taxes.
(2) State and local personal property taxes.
(3) State and local, and foreign, income, war profits, and excess profits taxes...

In addition, there shall be allowed as a deduction State and local, and foreign taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business....

Therefore, under I.R.C. § 164, taxpayer is entitled to deduct those property and local income taxes which are paid in association with patronage and non-patronage income. There is nothing discernible which restricts or limits the taxpayer from deducting those particular expenses from both sources of taxpayer's income. This conclusion is reinforced by the particular federal form employed by taxpayer in distinguishing its forms of income. Form 8817, entitled "Allocation of Patronage and Nonpatronage Income and Deductions," provides in lines 12 through 29 specific provisions whereby taxpayer is permitted to specify and then deduct its local income and property taxes from both its "Patronage" (column a) and from its "Nonpatronage" (column b) "taxable income."

Under I.R.C. § 164, taxpayer was plainly entitled to "deduct" local gross income and property taxes from both its patronage and non-patronage income. The additional fact that, under I.R.C. § 277, taxpayer was also entitled to deduct the sum of its patronage income does not nullify the effect of the deduction permitted under I.R.C. § 164. The obligation placed on taxpayer under 45 IAC 3.1-1-8(3)(a), (b) requires that taxpayer add back the local gross income and property taxes deducted; there is simply no reasonable reading of the regulation which permits the taxpayer to add back *some* income and property taxes but ignore the parallel deduction it made of other income and property taxes. Taxpayer is correct that the federal tax is assessed against its non-patronage income. Nonetheless, in arriving at its federal adjusted gross income – however intricate that calculation may have been – it deducted gross income and property taxes from *both* its patronage and non-patronage income. Those taxes must be added back.

FINDING

Taxpayer's protest is respectfully denied.

II. Abatement of the Ten Percent Negligence Penalty

Taxpayers ask the Department to exercise its discretionary authority and abate the ten percent negligence penalty assessed at the time the audit report was concluded. IC 6-8.1-10-2.1 requires that a ten percent penalty be imposed if a tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) permits the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed..."

The factors which "may be considered in determining reasonable cause" include the "nature of the tax involved" and the "published department instructions, information bulletins, letters of findings, rulings, [and] letters of advice." 45 IAC 15-11-2(c)(1), (4).

Given the nature of taxpayer's business and the tax laws implicated by that particular business, it cannot be said that the taxpayer failed to exercise "ordinary business" care in arriving at the decisions it did. The Department finds that abatement of the ten percent negligence penalty is warranted.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420010057.LOF

LETTER OF FINDINGS NUMBER: 01-0057
Sales and Use Tax
For Tax Periods: 1997-1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Sales and Use Tax – Delivery Charges

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-4-1(b), IC 6-2.5-4-1 (e) (2), IC 26-1-2-401(2), 45 IAC 2.2-4-3 (a), 45 IAC 2.2-4-3(b)(3)

The taxpayer protests the assessment of tax on delivery charges.

2. Sales and Use Tax – Scotchguard Fees

Authority: IC 6-2.5-4-1(e)(2), Sales Tax Information Bulletin #2, May, 2002

The taxpayer protests the assessment on scotchguard fees.

3. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2, 45 IAC 15-11-2

The taxpayer protests the imposition of the ten percent (10%) penalty.

STATEMENT OF FACTS

The taxpayer is a retail furniture store. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest and penalty. The taxpayer protested and a hearing was held on the issues of tax assessed on delivery charges, tax assessed on scotchguard applications, and the penalty.

1. Sales and Use Tax – Delivery Charges

DISCUSSION

The taxpayer delivers furniture with its own employees on its own trucks. The taxpayer's invoices include a separately stated delivery fee that covers the transportation services. The department assessed sales tax on the delivery fees. The taxpayer contends that the delivery fees are nontaxable services.

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequent selling of tangible personal property. IC 6-2.5-4-1(b). Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales tax. Delivery prior to the transfer of title to the purchaser is, however, one of the enumerated services that is specifically subjected to sales tax. IC 6-2.5-4-1(e)(2).

The taxpayer maintains that separately stated delivery charges where no F.O.B. has been established are non taxable. The taxpayer bases this conclusion upon 45 IAC 2.2-4-3(b)(3) which states, "[d]elivery charge[s] separately stated where no F.O. B. has been established [are] non taxable." The taxpayer's reliance on F.O.B. designations in this case is misplaced. The Regulation's reference to F.O.B. designations are applicable only when public transportation companies deliver the product.

There are two prerequisites for separately stated delivery charges to be subject to sales tax. The Regulations state these prerequisites as "[s]eparately stated delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of property not owned by the buyer." 45 IAC 2.2-4-3(a). In this instance, the first prerequisite for assessing sales tax is met because the delivery of the furniture is made by the taxpayer.

Whether or not sales tax applies to these delivery charges, then, depends upon when title to the goods transferred to the buyer. The Indiana law concerning the passing of title of goods to the buyer states that, "Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods... " IC 26-1-2-401(2). The taxpayer offered no evidence indicating that title to the goods passed to the buyer at any point prior to delivery of the goods. The taxpayer's fact situation, then, meets the requirements of 45 IAC 2.2-4-3(a) with the delivery service taking place prior to the transfer of title to the buyer. The delivery charges are subject to Indiana sales tax.

FINDING

The taxpayer's protest is denied.

2. Sales and Use Tax – Scotchguard Fees

DISCUSSION

The taxpayer offers purchasers the option of purchasing scotchguard application and related warranty. The department assessed additional sales tax on the application of the scotchguard prior to delivery of the product to the consumer pursuant to IC 6-2.5-4-1(e)(2) that provides that services provided prior to delivery are subject to the sales tax.

The taxpayer contends that the fee charged is actually for the exempt purchase of an optional warranty and not for the application of the scotchguard prior to delivery. The department's definition of an optional extended warranty is found in Sales Tax Information Bulletin #2, May, 2002 as follows:

> Optional extended warranties and maintenance agreements may either be purchased alone, or purchased as an option with the sale of the covered product. Typically, the terms of these agreements provide assurances that any required service and parts will be provided in the event of a break down or malfunction of the covered product.

The taxpayer's evidence consists of an invoice from the company providing the chemical and the warranty to the taxpayer. The invoice shows no charge for this chemical to the taxpayer. The taxpayer's evidence and argument misses the point. There is no evidence that the taxpayer sells the warranty without applying the chemical. Therefore, the sale of the warranty is inextricable from the application of the chemical.

FINDING

The taxpayer's protest is denied.

3. Tax Administration – Penalty

DISCUSSION

The taxpayer also protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Negligence is defined at 45 IAC 15-11-2(b) as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2 (c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed... "

The taxpayer provided sufficient evidence that it was not willfully negligent in its failure to collect and remit sales tax on the delivery charges.

FINDING

The taxpayer's protest to the imposition of the penalty is sustained.

DEPARTMENT OF STATE REVENUE

0220010111
0220010112.LOF

LETTER OF FINDINGS NUMBERS: 01-0111; 01-0112
Indiana Corporate Income Tax
For the Tax Years 1996, 1997, and 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Service Income Received from Out-of-State Customers – Gross Income Tax

Authority: IC 6-2.1-2-2(a); IC 6-8.1-5-1(a); IC 6-8.1-5-1(b); 45 IAC 1-1-121; 45 IAC 1-1-121(a)

Taxpayers argue that the audit erred in determining that their income, derived from the out-of-state provision of services to Indiana customers, was subject to the state's gross income tax.

II. Payroll Adjustment – Adjusted Gross Income Tax

Authority: 45 IAC 3.1-1-3; I.R.C. § 62

Taxpayers argue that the audit, in calculating the taxpayers' Indiana adjusted gross income tax, erred in disallowing a portion of payroll expenses – purportedly attributable to the second taxpayer – reported on the first taxpayer's federal return.

III. Abatement of the Ten Percent Negligence Penalty

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c)

Taxpayers request that the Department of Revenue exercise its discretion to abate the ten percent negligence imposed against both taxpayers at the time of the original audit reports.

STATEMENT OF FACTS

Both taxpayers are out-of-state companies and are both affiliate members of a larger group of related companies. Both taxpayers are incorporated in Ohio and conduct business from an Ohio business location. Both taxpayers provide their clients with bill collection services. Their clients include retailers, financial institutions, credit card companies, and telecommunications companies. Taxpayers and clients enter into agreements in which taxpayers agree to obtain payment for unpaid bills owed the clients. The taxpayers pursue the collection of the unpaid bills by sending dunning letters and making phone calls to the debtors. According to taxpayers, these letter-writing and phone activities are conducted in Ohio.

During 1996, 1997, and 1998 the taxpayers took various and inconsistent views with regard to their Indiana gross income tax liability. For example, in 1996 taxpayers reported all collections related to Indiana customers as subject to gross income tax. In 1997, taxpayers reconsidered their position and determined that none of the Indiana service revenues were subject to Indiana gross income tax.

The Department of Revenue (Department) conducted successive audits (Hereinafter simply referred to as "audit.") of taxpayers' business records for the tax years 1996, 1997, and 1998. The audit concluded that taxpayers had "substantial nexus' with Indiana and that their Indiana activities subjected taxpayers' Indiana collection service receipts to gross income tax. The audit only considered receipts received from Indiana customers in calculating the taxpayers' gross income tax liability.

The audit was initially permitted to examine taxpayers' federal and state income tax returns. Certain correspondence was exchanged between taxpayers and the audit personnel in which the Department requested additional information. However, the audit concluded that – despite the information provided within the resulting correspondence – there "[was] insufficient information to accurately determine the source and activities of [taxpayers'] collection service income." Therefore, the audit reached its conclusions based upon the "best information available."

Taxpayers' disagreed with the audit's conclusions. Thereafter, taxpayers' representatives submitted a protest setting out numerous challenges to the audit's conclusions and to the amount of taxes assessed as a result of those conclusions.

An administrative hearing was conducted during which taxpayers' protest was discussed. It was agreed that three issues required resolution at the administrative level. This Letter of Findings addresses those three issues.

DISCUSSION

I. Service Income Received from Out-of-State Customers – Gross Income Tax

Indiana imposes a gross income tax on income received by Indiana residents and by certain out-of-state residents. IC 6-2.1-2-2(a) states as follows:

> An income tax, known as the gross income tax, is imposed upon the receipt of: (1) the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana; and (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident of Indiana.

Both taxpayers are registered to do business in Indiana; taxpayers admit, that in rendering their collection services, they are protected by Indiana law and "have the ability to file suits in Indiana." In addition, taxpayers agree with the audit that they have "substantial nexus" with Indiana.

It is evident from the audit report that the Department was less than satisfied with the adequacy of the information received from the taxpayers during the audit investigation. The audit report noted that there was "insufficient information to accurately determine the source and activities of [taxpayers'] service income." Taxpayers disagree maintaining that they provided the Department with access to not only their state and federal returns but also the original work papers used in preparing those returns. Furthermore, taxpayers maintain that, on two separate occasions, taxpayers provided written answers to questions submitted to them by the Department.

Setting aside the issue of whether taxpayers fully cooperated with the Department or were wholly forthcoming in responding to the Department's request for additional information, it is apparent that the precise nature of taxpayers' business activities, taxpayers' relationship to the parent company, and the extent and nature of taxpayers' in-state activities remain to some extent unclear.

45 IAC 1-1-121 provides that "Gross income derived from the performance of a contract or service within Indiana is subject to gross income tax." The regulation points out that "Income from a contract for the performance of services within the State is subject to gross income tax. However if the contract calls for the performance of services both within and without the State by a nonresident with no in-state business situs and the non-resident's performance within the State is minimal or incidental in comparison to his performance out-of-state, no service income will be taxed." 45 IAC 1-1-121(a).

The regulation instructs that the income received by an out-of-state business for the performance of services is not subject to the state's gross income tax unless the business's activities within the state are more than "minimal or incidental" compared to those activities performed within the foreign state. To that end, the Department has set a benchmark figure for determining whether a business's in-state activities exceed the "minimal or incidental" threshold. The regulation states that, "If five percent (5%) or less of the total hours or total fee under the contract in any tax year is attributable to services performed in Indiana, the entire proceeds of the contract received in that year are exempt from gross income tax. If the five percent (5%) figure is exceeded, the entire proceeds of the contract are taxable." 45 IAC 1-1-121(a).

Taxpayer maintains that all of its phone calls are made from outside of the state and that all of its collection letters are prepared and then sent from outside the state. What has not been established are the nature and extent of the taxpayers' activities performed within the state. The audit report indicated that taxpayers were "vague in the answers and information provided" and that the "no general ledgers, no service billings, no notes or contracts, no detail of customers" were available for examination. After reviewing the information taxpayers provided during various stages of the audit investigations, it is reasonable to conclude that taxpayers' responses to the Department's questions outlining their Indiana activities are somewhat obtuse. For example, in response to a question of whether taxpayers' pursued collection activities against recalcitrant debtors within the state, taxpayers' representative stated that "Presumably, if either entity is registered to do business in Indiana, they have the ability to file suits in Indiana." (Both entities are registered with the Indiana Secretary of State to do business within the state.)

It is apparent from the available information that taxpayers engaged in certain activities within the state. However, whether those in-state activities constituted one percent, five percent, or 20 percent of the activities related to the acquisition of the Indiana source income, is an issue which cannot be resolved with any mathematical certainty from the information the taxpayers provided at the time of the audit, from the information contained within the original audit report, or from the information contained within taxpayers' initial protest letter. Accordingly, the audit did not overstep its authority under 6-8.1-5-1(a) in determining that taxpayers' Indiana source income was subject to the state's gross income tax. The statute plainly states that, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available." IC 6-8.1-5-1(a).

IC 6-8.1-5-1(b) provides that the assessment of gross income taxes is "prima facie evidence that the department's claim for the unpaid tax is valid." It is taxpayers' burden to demonstrate that the proposed assessment is wrong. Id. Taxpayers have failed to do so, and the Department is left with no alternative but to deny their protest.

FINDING

Taxpayers' protest is respectfully denied.

II. Payroll Adjustment – Adjusted Gross Income Tax

In calculating its adjusted gross income tax, taxpayer one deducted an amount of payroll expenses which it had paid on behalf of taxpayer two. The audit disallowed the portion of the payroll paid on behalf of taxpayer two. Taxpayer one argues that it was entitled to the entire deduction because it had entered into an agreement with taxpayer two to serve as both companies' "common payroll master."

Pursuant to this agreement, taxpayer one made the payroll payments for taxpayer two. In return, taxpayer two forwarded a "service fee charge" to taxpayer one. Taxpayer one now argues that "there is no reasonable basis for [the] disallowance."

In support of its argument taxpayer one cites to 45 IAC 3.1-1-3 which states as follows; "The following deductions contained in Internal Revenue Code Section 62 are allowed in determining Indiana adjusted gross Income: (1) Trade and business deductions."

In turn, the federal code allows the taxpayer – calculating its adjusted gross income – to subtract from its gross income certain expenses "attributable to a trade or business carried on by the taxpayer...." I.R.C. § 62.

In calculating its adjusted gross income, taxpayer one is plainly entitled to deduct from its gross income the amount of money it pays to its employees. The sum of money it pays to those employees may be deducted because, under I.R.C. § 62, that sum represents a cost attributable to conducting its own collection business. However, there is no discernible authority under either 45 IAC 3.1-1-3 or I.R.C. § 62 which permits taxpayer one to deduct the amount of payroll paid on behalf of a second entity. Taxpayer one's secondary payroll costs are not one of the expenses incurred as a result of taxpayer one's collection business; these secondary payroll expenses – incurred as a result of its agreement with taxpayer two – are peripheral to the conduct of taxpayer one's business affairs.

FINDING

Taxpayers' protest is respectfully denied.

III. Abatement of the Ten Percent Negligence Penalty

Taxpayers ask the Department to exercise its authority and abate the ten percent negligence penalties assessed at the time the audit report was concluded. IC 6-8.1-10-2.1 requires that a ten percent penalty be imposed if a tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) permits the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Taxpayers' inconsistent stance regarding their Indiana tax liabilities and their circumspect provision of requested information does not exhibit the "ordinary business care and prudence" warranting abatement of the negligence penalty.

FINDING

Taxpayers' protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220010263.LOF

LETTER OF FINDINGS NUMBER: 01-0263
Income Tax
For Tax Period: 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUE

Adjusted Gross Income Tax – Throwback Sales

Authority: 15 U.S.C.S. 381; IC 6-3-1-25; IC 6-8.1-5-1(b); 45 IAC 3.1-1-64; Indiana Department of State Revenue v. Continental Steel Corporation, 399 N.E.2d 754 (Ind. Ct. App. 1980); Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992)

The taxpayer protests the imposition of tax pursuant to the throw-back rule.

STATEMENT OF FACTS

The taxpayer designs, manufactures, and markets liquid electrostatic paint application equipment. The taxpayer has employees who represent it in various locations. It also contracts for a manufacturer's representative who is employed by a French concern to represent it in Europe and a manufacturer's representative who is employed by a Thai concern to represent it in Asia. In an audit, the Indiana Department of Revenue, hereinafter the "department," assessed adjusted gross income tax on the receipts from sales

that originated in Indiana and were delivered to several foreign countries where the taxpayer has no nexus requiring the filing of income tax returns. The taxpayer protested this assessment and a hearing was held.

DISCUSSION

15 U.S.C.S.381 (Public Law 86-272) prohibits states from imposing a net income tax on a foreign taxpayer if the foreign taxpayer's only business activity within that state is the solicitation of sales. A state may not impose an income tax on income derived from business activities within that state unless those activities exceed the mere solicitation of sales. 15 U.S.C.S. 381 (a), (c). The effect of the throw-back rule is to revert sales receipts back to the state from where the goods were shipped in those situations where 15 U.S.C.S. 381 deprives the purchaser's own state of the power to impose a net income tax. 45 IAC 3.1-1-64. In effect, 15 U.S.C.S. 381 permits Indiana to tax out-of-state business, without violating the Commerce Clause and without the possibility of subjecting taxpayers to double taxation, because Indiana's right to tax those out-of-state activities is derivative of the foreign state's own taxing authority. In every sales transaction, at least one state has the authority to tax income derived from the sale of the tangible personal property; if the state wherein the sale occurred is forbidden to do so by 15 U.S.C.S. 381, then the income is "thrown-back" to the originating state.

For the purposes of determining whether a taxpayer is subject to the taxing jurisdiction of another state pursuant to 45 IAC 3.1-1-64, "the term 'state' means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof." IC 6-3-1-25. Accordingly, the jurisdictions at issue fall within the definition of a "state" and are properly considered as potentially subject to the throw back rule. *See also* IC 6-3-1-25.

The department must determine whether the taxpayer's employees' activities within the foreign jurisdictions exceed the 15 U.S.C.S. 381 benchmark of "mere solicitation." Indiana Department of State Revenue v. Continental Steel Corporation, 399 N.E.2d 754 (Ind. Ct. App. 1980), defines those activities which do and do not exceed the "mere solicitation," standard. In that case, the court held that, "solicitation should be limited to those generally accepted or customary acts in the industry which lead to the placing of orders not those which follow as a natural result of the transaction, such as collections, servicing complaints, technical assistance and training..." Id. at 759. Further, "solicitation must be limited to those acts which lead to the placing of orders and does not include those acts which follow as a result of the transaction." Id. The court set out examples of activity which exceeded "mere solicitation" including "giving spot credit, accepting orders, collecting delinquent accounts and picking up returned goods within the taxing state, pooling and exchanging technical personnel in a complex mutual endeavor, maintaining personal property and associated local business activity for purposes not related to soliciting orders within the taxing state." Id.

In Continental, the court held that the taxpayer's employees' activities within the foreign state exceeded solicitation because the taxpayer's employees' activities "[did] not lead to the placing of orders but follow[ed] as a natural result of transaction." Id. Those activities included the taxpayer's "salesmen making adjustment on complaints, [and] salesmen giving customers technical assistance... "Id.

The "mere solicitation" by a corporation's employees standard was refined by the Supreme Court in Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992). The Court concluded, "although solicitation covered more than what was strictly essential to making requests for purchases, the fact that an activity is performed by salespersons does not automatically convert that activity into solicitation." Id. at 2456-57.

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). The taxpayer submitted a significant amount of material concerning the activities of its employees in the foreign countries. This material substantiated that the taxpayer's employees had significant activities past mere solicitation and established nexus in Canada and Mexico. Therefore, Indiana is precluded from imposing corporate income tax on the income from Indiana sales to those jurisdictions.

The taxpayer was unable to sustain its burden of proving that its employees had significant activities past mere solicitation and established nexus in the other foreign jurisdictions. Receipts from Indiana sales to these other foreign jurisdictions were properly thrown-back and subjected to Indiana adjusted gross income tax.

FINDING

The taxpayer's protest to the tax assessed on income from sales to Canada, and Mexico is sustained. The remainder of the protest is denied.

DEPARTMENT OF STATE REVENUE

0220010312.LOF

LETTER OF FINDINGS NUMBER: 01-0312
Adjusted Gross Income Tax – Unitary (Combined) Filing Status
Fiscal Years 1996 through 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana

Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Adjusted Gross Income Tax – Nexus

Authority: *Rural Elec. Mem. v. Indiana Dept. of State Revenue*, 733 N.E.2d 44 (Ind.Tax 2000); IC 6-8.1-9-1(a); *Black's Law Dictionary* (7th Ed. 1999)

Taxpayer protests the Department's determination that taxpayer should have filed unitary combined tax returns with its holding company, on the basis that taxpayer does not have the requisite nexus with Indiana to subject taxpayer to the Indiana adjusted gross income tax.

STATEMENT OF FACTS

Taxpayer is a manufacturer and distributor of pharmaceutical products. Although taxpayer has no business location within Indiana and maintains headquarters outside of the state of Indiana, taxpayer does have a resident sales force in Indiana. Taxpayer's resident salespersons generally work from home offices. The salespersons do not give away samples; and, no orders are accepted or approved within Indiana.

In 1990, taxpayer formed a wholly owned Delaware holding company (hereinafter, "Holding Company"). At that time, taxpayer transferred marketing rights to the Holding Company pursuant to an Internal Revenue Code § 351 tax-free exchange for one hundred percent (100%) of the Holding Company's stock. Three thousand (3000) shares of common stock with a par value of one dollar ($1.00) per share were issued. Taxpayer and the Holding Company simultaneously executed a royalty agreement whereby the Holding Company granted an exclusive, irrevocable license of the marketing rights and other intellectual property to the taxpayer in exchange for royalty payments.

The royalty fee was computed based upon a percentage of sales of licensed products sold by the taxpayer. The Holding Company then loaned royalty proceeds at a market rate of interest to taxpayer and other members of the taxpayer's family of companies. Royalty proceeds not loaned to members of taxpayer's family of companies were returned to taxpayer in 1998 in the form of an inter-company dividend that was one hundred percent (100%) eliminated from taxable income.

After review of the audit results, the Department's position was that the business activities of the Holding Company and the taxpayer constituted a unitary business. In addition to finding that taxpayer and the Holding Company enjoyed unity of ownership, operation, and use, the Department further found that the net effect of the inter-company business arrangement was that the large amounts of royalty income reported by the Holding Company, and the corresponding large royalty expense reported by taxpayer reduced the taxable income apportioned to all states in which taxpayer conducted business. Due to this distortion of income, the Department determined that the only way to realistically portray taxpayer's true Indiana income was to require taxpayer to file a unitary combined return with the Holding Company.

Taxpayer disagrees with the Department's determination. According to taxpayer, a review of taxpayer's activities in Indiana renders the Department's unitary determination moot, as the review demonstrates that taxpayer does not have the requisite nexus within the state to subject taxpayer to the Indiana adjusted gross income tax.

Adjusted Gross Income Tax – Nexus

DISCUSSION

In the instant case, the Department determined that taxpayer should have filed unitary combined tax returns with its holding company in order to accurately report taxpayer's Indiana income. Taxpayer asserts that the Department's determination is moot because taxpayer lacks sufficient nexus with the state to subject taxpayer to Indiana's adjusted gross income tax.

Taxpayer raises the nexus argument for the first time in its protest letter dated October 26, 2001. As such, the original audit report does not address this argument. Based upon the circumstances of this case (*i.e.*, taxpayer's raising an argument not addressed in the audit report), it must be determined whether or not taxpayer's protest is ripe for determination.

"Ripeness relates to the degree to which the defined issues in the case are based on actual facts rather than on abstract possibilities, and are capable of being adjudicated on an adequately developed record." *Rural Elec. Mem. v. Indiana Dept. of State Revenue*, 733 N.E.2d 44, 47 (Ind.Tax 2000). According to Black's Law Dictionary, p. 1328 (7th Ed. 1999), ripeness is the "circumstance existing when a case has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made."

In the instant case, the nexus issue is not ripe for determination. Taxpayer raised the nexus issue after the audit report was completed. Although the audit report provides ample findings regarding whether or not taxpayer should have been required to file unitary tax returns with the Holding Company, the report does not (because it could not) provide any findings regarding taxpayer's nexus argument. Because of the unique circumstances of this case, the Hearing Officer received a file wherein the facts were insufficient to allow an intelligent decision to be made.

Notwithstanding the above, taxpayer may still preserve its nexus issue. In order to do so, however, taxpayer must pay the current assessment in full and file a claim for refund. By paying the current assessment and filing a claim for refund, taxpayer's claim for refund avoids the bar of statute of limitations. (*See*, IC 6-8.1-9-1(a) which states in relevant part: "If a person has paid more

tax than he determines is legally due for a particular taxable period, he may file a claim for refund with the department. In order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:...; (2) the date of payment;...")

Once taxpayer pays the assessment and files its claim for refund, the Audit Division will review the claim for refund and make its determination based upon the facts of the case. If taxpayer is not satisfied with the Audit Division's decision regarding taxpayer's claim for refund, taxpayer may file a protest requesting a hearing before a Hearing Officer for the Department.

FINDING

Taxpayer's protest is denied. However, if taxpayer would like to preserve its nexus argument, taxpayer should, in accordance with this Letter of Findings, pay the assessment in full and file a claim for refund..

DEPARTMENT OF STATE REVENUE

0420010313.LOF

LETTER OF FINDINGS NUMBER: 01-0313
Sales and Use Tax
For Tax Years 1998 through 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax – Post Mix and CO2 Equipment

Authority: General Motors Corporation v. Indiana Department of State Revenue, 578 N.E.2d 399 (Indiana Tax Court 1991); 45 IAC 2.2-5-8

Taxpayer protests imposition of use tax on post mix and CO2 equipment.

II. Sales and Use Tax – Shipping Pallets

Authority: IC 6-2.2-4-2; 45 IAC 2.2-5-16

Taxpayer protests imposition of use tax on shipping pallets.

STATEMENT OF FACTS

Taxpayer produces and sells soft drinks. Taxpayer sells syrup and provides fountain-style mixing equipment to its customers, who dispense the soft drinks on a glass-by-glass basis. The Indiana Department of Revenue ("Department") issued proposed use tax assessments on the equipment used to mix the drinks and on shipping pallets used by taxpayer to ship goods to a related company. Taxpayer protests these assessments. Further facts will be provided as necessary.

I. Sales and Use Tax – Post Mix and CO2 Equipment

DISCUSSION

Taxpayer protests the Department's proposed assessment of use tax on 73.11% of taxpayer's purchase of fountain-style soft drink mixing equipment. The equipment is located at the various restaurants where taxpayer's customers fill soft drink orders by the glass. The mixing equipment is essentially an elaborate swizzle stick. The Department issued assessments on the equipment on the basis that 73.11% of the equipment is capitalized by taxpayer and is supplied to taxpayer's customers at no charge.

The Department based its assessment on 45 IAC 2.2-5-8(a), which states:

> In general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. *[45 IAC 2.2]* extends only to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. It does not apply to material consumed in production or to materials incorporated into tangible personal property produced.

The Department determined that the equipment was not used directly by the purchaser (taxpayer) in the direct production of tangible personal property. Therefore, the exemption afforded by 45 IAC 2.2-5-8 did not apply.

Taxpayer protests that the equipment is used in its continuous production process, and should be exempt from sales tax as described in 45 IAC 2.2-5-8. Taxpayer refers to General Motors Corporation v. Indiana Department of State Revenue, 578 N.E.2d 399 (Indiana Tax Court 1991). In General Motors, the court explains:

> Finally, a determination that an integrated production process ends upon the completion of the actual end product marketed (the most marketable product) is wholly consistent with the legislative purposes of the exemption statutes to encourage industrial growth and to avoid tax pyramiding.

Id. at 405

Taxpayer believes that its most marketable product is the individual glass of soft drink, and that its production process ends

with the mixing of ingredients through the mixing equipment at issue. Since, according to taxpayer, the most marketable product is made with the mixing equipment, the production process does not end until the mixing equipment is used, thereby making the equipment part of the production process and exempt as provided in 45 IAC 2.2-5-8.

Taxpayer's position is flawed. Taxpayer's customer is not the ultimate consumer of the soft drink. Rather, taxpayer's customer is the restaurant. The restaurant buys syrup from taxpayer. The customer's employees then use the equipment to mix the syrup with chilled water and CO2. Taxpayer's actual end product marketed to its restaurant customers is the syrup, not the completed soft drink. Therefore, the production process ends when taxpayer sells the syrup to the restaurant.

Taxpayer also asserts that to tax the mixing equipment would result in tax pyramiding. The court in General Motors explained:

> When equipment or materials used in the direct manufacturing process are taxed, the tax is generally passed on as part of the cost of the product being produced.

General Motors at 405.

As previously established, the equipment is not used in the direct manufacturing process by taxpayer. Any processing utilizing the mixing equipment is performed after taxpayer has sold its product (syrup) to its customer. The purchase of the mixing equipment is not part of the manufacturing process of the syrup, which taxpayer sells to its customers.

While taxpayer is correct that the final consumers of soft drinks want a pre-mixed drink, taxpayer does not charge by the glass, but rather charges for the syrup. The mixing equipment is not part of taxpayer's production process. Therefore, the mixing equipment is not directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property, and is not eligible for the exemption provided in 45 IAC 2.2-5-8. The equipment is not used by taxpayer, and does not play any role in the manufacture of syrup. It is the syrup which is taxpayer's actual end product marketed to its restaurant customers, so no tax pyramiding occurs.

FINDING

Taxpayer's protest is denied.

II. Sales and Use Tax – Shipping Pallets

DISCUSSION

Taxpayer protests the imposition of use tax on shipping containers used to ship goods to an out of state sister division. The Department assessed taxpayer's purchase of the containers. The Department referred to 45 IAC 2.2-5-16, which states in part:

> (a) The state gross retail tax shall not apply to sales of nonreturnable wrapping materials and empty containers to be used by the purchaser as enclosures or containers for selling contents to be added, and returnable containers containing contents sold in a sale constituting selling at retail and returnable containers sold empty for refilling.

Taxpayer protests that the containers are used for selling finished goods to its sister division, which does not return the pallets to taxpayer, thus constituting a retail transaction.

Also of relevance is IC 6-2.2-4-2, which states in pertinent part:

> (a) A person is a retail merchant making a retail transaction when he is making wholesale sales.
>
> (b) For purposes of this section, a person is making wholesale sales when he:
>
> > (1) sells tangible personal property, other than capital assets or depreciable property, to a person who purchases the property for the purpose of reselling it without changing its form;

Taxpayer has provided sufficient documentation to establish that the containers are nonreturnable and are used by the purchaser as a container for selling contents to be added. In this case the finished goods are added to the containers and then the finished goods are sold in a retail transaction without return of the pallets. Also, while taxpayer does purchase and capitalize some pallets used in its business, the pallets resold to the sister corporation are expensed rather than capitalized. Therefore, taxpayer is making a retail transaction under IC 6-2.2-4-2 and so satisfies the exemption requirements of 45 IAC 2.2-5-16.

FINDING

Taxpayer's protest is sustained. The pallets and containers expensed and used by taxpayer to ship goods to its out of state sister division are exempt.

DEPARTMENT OF STATE REVENUE

0120020084.LOF

LETTER OF FINDINGS NUMBER: 02-0084
Individual Income Tax
For the Tax Periods: 1997 through 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax – Indiana Source Income

Authority: IC 6-3-2-1; IC 6-8.1-5-1; IC 6-3-1-12; 45 IAC 3.1-1-22; Fla. Stat. § 199.052; Fla Stat. §222.17

The Taxpayer protests the Department's adjustment to include dividends and interest in his adjusted gross income.

II. Individual Income Tax – Entertainment Expenses

Authority: IC 6-3-1-3.5; IRC § 212; IRC § 274; Treas. Reg §1.274-2; Treas. Reg §1.274-5A

The Taxpayer protests the Department's adjustment disallowing an entertainment expense.

III. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The Taxpayer protests the Department's assessment of a negligence penalty.

STATEMENT OF FACTS

Taxpayer and spouse filed joint Indiana individual income tax returns for the 1997, 1998, and 1999 calendar years. Taxpayer has filed form IT-40 PNR with the wife filing as an Indiana resident and the husband filing as a Florida resident. Taxpayer has excluded all income except in 1999 as being attributable to Florida. Taxpayer was audited for periods 1997 through 1999 and the auditor determined that all of husband's income was derived from Indiana sources. Taxpayer (husband) provided evidence of a Florida driver's license, voter registration, checking account and was selected for jury duty in Florida. Indiana BMV records indicate that husband's Indiana driver's license expired in August 1999. Taxpayers' residence is owned by a trust controlled by the wife and she claims the Indiana Homestead Credit on the Indiana property. Taxpayers indicated on their 1997 through 1999 Indiana tax returns that two vehicles were registered in Indiana. Taxpayers used their Indiana address on their federal income tax return. A business building burned in 1998, destroying records for business and personal operations. More facts supplied as necessary.

I. Individual Income Tax – Indiana Source Income

DISCUSSION

Taxpayer was audited for Income tax for the periods of 1997 through 1999. Taxpayer has filed form IT-40 PNR with the wife filing as an Indiana resident and husband filing as a Florida resident. Taxpayer has excluded all income except in 1999 as being attributable to Florida. The auditor determined that all of husband's income was derived from Indiana sources.

Taxpayer claims that since he is a resident of Florida his interest and dividend income should not be subject to tax in Indiana. IC 6-3-2-1 states in part: "[e]ach taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every non-resident person." In order to determine whether all of Taxpayer's income or just the income derived from Indiana sources is subject to Indiana adjusted gross income tax, Taxpayer must show that he was not an Indiana resident. "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made". IC 6-8.1-5-1.

A resident is defined as any individual who is domiciled in Indiana during the taxable year or any individual who maintains a permanent place of residence and spends more then one hundred eighty-three (183) days within the state. IC 6-3-1-12.

45 IAC 3.1-1-22 defines domicile as follows:

For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

(1) Purchasing or renting residential property
(2) Registering to vote
(3) Seeking elective office
(4) Filing a resident state income tax return or complying with the homestead laws of a state
(5) Receiving public assistance
(6) Titling and registering a motor vehicle
(7) Preparing a new last will and testament which includes the state of domicile.

Taxpayer/husband has provided documentation showing that he is registered to vote and has been summoned to jury duty in Florida. Taxpayer also maintains a Florida driver's license and maintained a checking account in Florida. The husband canceled his Indiana voter's registration in 1996. Taxpayers own several acres of farm ground in Indiana and own several Indiana businesses.

Taxpayers' residence is owned by a trust controlled by the wife and she claims the Indiana Homestead Credit on the Indiana property. However, Taxpayers indicated on their 1997 through 1999 Indiana tax returns that two vehicles were registered in Indiana. Also, according to records maintained by the Indiana Bureau of Motor Vehicles, the husband also maintained a valid Indiana driver's license that expired in August 1999 and registered a vehicle in Indiana in 2000. Taxpayers used their Indiana address on their federal income tax return.

While Taxpayer does not contend that the wife is a Florida resident, they claim that the husband is and that the couple spends much of their time in Florida. However, no documentation has been provided to show how much of each year is spent in Florida. Taxpayer conceded that a Florida Intangible Personal Property Tax Return was not filed as required by Fla. Stat. § 199.052. In addition. there is no evidence that husband filed a Declaration of Domicile in Florida pursuant to Fla Stat. §222.17.

Based on all the facts before the Department, Taxpayer has not demonstrated either a lack of an Indiana domicile or that he does not spend more then 183 days within the state of Indiana. Thus, all of Taxpayer's income should have been reported to Indiana.

FINDING

The Taxpayer's protest is respectfully denied.

II. Individual Income Tax – Entertainment Expenses

DISCUSSION

During the audit, the auditor made adjustments to Taxpayer's Sub-Chapter "S" distributions for disallowed advertising expenses. The expenses included Brickyard 400 and Indy Grand Prix race tickets.

The computation of Indiana Adjusted Gross Income for individuals begins with the definition provided in Section 62 of the Internal Revenue Code. IC 6-3-1-3.5. Taxpayer claims the expenses should be allowed pursuant to IRC § 212 which states in part: "[i]n the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year- (1) for the production or collection of income…."

However, Taxpayer does not consider IRC § 274(d) which states:

Substantiation Required. – No deduction or credit shall be allowed-

(1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),

(2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,

(3) for any expense for gifts, or

(4) with respect to any listed property (as defined in section 280F(d)(4)),

unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (C) the business purpose of the expense or the other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift. The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to such regulations. …

This is clarified in Treas. Reg §1.274-2 (1) which states in relevant part:

Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Code shall be allowed for any expenditure with respect to entertainment unless the taxpayer establishes-

(i) That the expenditure was directly related to the active conduct of the taxpayer's trade or business, or

(ii) In the case of an expenditure directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that the expenditure was associated with the active conduct of the taxpayer's trade or business….

Also Treas. Reg §1.274-2(c)(7) states:

Expenditures generally considered not directly related. Expenditures for entertainment, even if connected with the taxpayer's trade or business, will generally be considered not directly related to the active conduct of the taxpayer's trade or business, if the entertainment occurred under circumstances where there was little or no possibility of engaging in the active conduct of trade or business. The following circumstances will generally be considered circumstances where there was little or no possibility of engaging in the active conduct of a trade or business:

(i) The taxpayer was not present;

(ii) The distractions were substantial, such as-

(a) A meeting or discussion at night clubs, theaters, and sporting events, (*emphasis added*) or during essentially social gatherings such as cocktail parties….

Taxpayer has provided a list of the individuals who received the tickets. Yet, Taxpayer has not provided any documentation of what business took place either at or directly proceeding or following the races. Treas. Reg §1.274-5A(b)(1) states in part that:

Section 274(d) and this section contemplate that no deduction shall be allowed for any expenditure for travel, entertainment, or a gift unless the taxpayer substantiates the following elements for each such expenditure:

(i) Amount;
(ii) Time and place of travel or entertainment (or use of a facility with respect to entertainment), or date and description of a gift:
(iii) Business purpose; and
(iv) Business relationship to the taxpayer of each person entertained, using an entertainment facility or receiving a gift.

Treas. Reg. §1.274-5A(c)(2) states:

To meet the "adequate records" requirements of section 274(d), a taxpayer shall maintain an account book, diary, statement of expense or similar records provided in subdivision (ii) of this subparagraph) which, in combination, are sufficient to establish each element of an expenditure specified in paragraph (b) of this section. It is not necessary to record information in an account book, diary, statement of expense or similar record which duplicates information reflected on a receipt so long as such account book and receipt complement each other in an orderly manner.

Consequently, the auditor was correct in disallowing the expenditures. Taxpayer has not shown that any business took place.

FINDING

Taxpayer's request is respectfully denied.

III. Tax Administration – Penalty

Taxpayer protests the ten percent negligence penalty. The Department may impose a ten percent (10%) negligence penalty on the amount of deficiency as determined by the Department. IC 6-8.1-10-2.1. Also, 45 IAC 15-11-2 states in part:

…

(a) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(b) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;
(2) judicial precedents set by Indiana courts;
(3) judicial precedents established in jurisdictions outside Indiana;
(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable causes is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has not provided any reasonable caused to show that the penalty should be waived. Taxpayer's protest is respectfully denied.

FINDING

The Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0120020118.LOF

LETTER OF FINDINGS NUMBER: 02-0118
Individual Income Tax
Calendar Years 1999 and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalties assessed.

STATEMENT OF FACTS

The taxpayers' 1997 Indiana individual income tax return reflected a refund due in the amount of $9,544. According to the taxpayer's representative, the entire refund amount was to be applied to the taxpayer's 1998 estimated income tax account. However, someone altered the return by entering the figures $2,500 as the amount to be applied to the 1998 estimated account and $7,044 as an amount to be refunded to the taxpayer.

The $7,044 was refunded to the taxpayer. However, in preparing their 1998 and subsequent Indiana individual income tax returns, the taxpayers assumed that this amount had been applied to their estimated account and claimed credit for estimated tax payments accordingly. Naturally, the actual balance in the taxpayer's estimated account was consistently $7,044 less than what the taxpayers believed the balance to be. For tax years 1999 and 2000, the Department assessed penalties for the underpayment of estimated tax and the failure to remit the proper amount of tax due by the due date.

In a letter dated January 24, 2002, the taxpayer's representative requested that these penalties be waived based, in part, upon the following statement: "As soon as the refund (of $7,044) was identified as an estimated payment, the taxpayers paid the additional tax, interest and penalty…" This remittance was processed by the Department on November 27, 2000. The taxpayer's representative further asserts that the Department was in error in making the refund.

I. Tax Administration – Penalty

DISCUSSION

Administrative Rule 45 IAC 15-11-2 (b) states the following:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The identity of the person who altered the 1997 return is unknown. However, lacking any evidence to the contrary, the Department must conclude that this alteration was made by the taxpayers. The refund of $7,044 for tax year 1997 is deemed to be due to the taxpayers' error and not to any error on the part of the Department. Therefore, the imposition of penalty is proper. The taxpayers have not established that their failure to timely pay the full amount of tax due was due to reasonable cause and not due to negligence.

FINDING

The taxpayers' protest is denied.

DEPARTMENT OF STATE REVENUE

0220020246.LOF

LETTER OF FINDINGS NUMBER: 02-0246
Unrelated Business Income Tax
For the Years Ending 1996 through 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross and Supplemental Net Income Tax – Unrelated Business Income

Authority: IC 35-45-5-3; IC 6-2.5-5-25; IC 6-2.1-3-23; IC 6-3-2-3.1(a); IC 6-3-1-17(a); IC 6-8.1-5-1; 45 IAC 3.1-1-68

The taxpayer protests the classification of proceeds from illegal gambling machines as unrelated business income.

II. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-1 & 2

The taxpayer protests the Department's imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

As a result of an Indiana Excise Police investigations and citations dated August 12, 1995 and June 29, 2000, the Taxpayer was cited for professional gambling under IC 35-45-5-3 and promotion of professional gambling under IC 35-45-5-4 respectively. The Department conducted an income tax audit based upon the Taxpayer's possession of five (5) illegal gambling machines discovered at its location.

The Taxpayer's representative admitted that the operation of the gaming machines was illegal for state law purposes. The taxpayer also received 60% of the proceeds from the machines for allowing and operating the machines at their facility.

I. Adjusted Gross and SNIT – Unrelated Business Income

DISCUSSION

Under Indiana Code section 35-45-5-3 the machines operated in taxpayer's establishment constitute illegal gambling. Proceeds from illegal gambling are considered unrelated business income and subject to Indiana gross or adjusted gross and supplemental net income tax.

IC 35-45-5-3 provides in pertinent part:

A person who knowingly or intentionally: … (3) maintains, in a place accessible to the public slot machines, one-ball machines or variants thereof… commits professional gambling, a Class D felony.

The Department and the Internal Revenue Service have held that illegal gambling is always unrelated to a tax exempt organization's exempt purpose. Exemption from tax for exempt organizations is tied to the gross income tax provisions with respect to exempt organizations. IC 6-2.5-5-25. As provided under IC 6-2.1-3-23, exempt organizations are not entitled to exemption from gross income received by a taxpayer that is derived from an unrelated trade or business, as defined in Section 513 of the Internal Revenue Code. Thus, the Department's determination was guided by I.R.C. § 513, which provides, in part, the following:

…The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

Pursuant to IC 6-3-2-3.1(a) and IC 6-3-1-17(a), the Indiana General Assembly has expressly adopted the Code's tax treatment, with respect to Code section 501(c) organizations, for purposes of the Indiana adjusted gross and supplemental income tax analysis. Moreover, the Department's rule 45 IAC 3.1-1-68 defines an unrelated trade or business under the same guidelines as IRC section 513, and the rule also subjects any unrelated business income to the Indiana taxes. Additionally, the rule cites taxpayers to Code sections 511 through 515 for guidance in determining whether income is subject to the taxes.

Pursuant to IC 6-8.1-5-1 if the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The taxpayer's representative argues that only their members are allowed to use the gambling machines and that all of the money should have been classified as related business income. The taxpayer contends that it is a fraternal organization organized for social purposes and that the machines are played for social purposes and are a vital part of its receipts used to operate its facility. The taxpayer's representative contends that they had an audit by the Internal Revenue Service in which the federal auditor told the organization that gambling proceeds from its machines is related business income. The Department doubts the validity of IRS auditor's alleged statement. If the taxpayer was established to overtly conduct illegal activities then the income could be classified as related. The use of illegal gambling machines is also grounds for the IRS and State of Indiana to revoke taxpayer's not-for-profit status.

FINDING

The taxpayer's protest is denied.

II. Tax Administration – Liability for 10% Negligence Penalty

DISCUSSION

The taxpayer protests the Department's imposition of the ten percent (10%) penalty assessment. Indiana Code section 6-8.1-10-2.1 requires a ten percent (10%) penalty to be imposed if the tax deficiency is due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2 provides guidance in determining if the taxpayer was negligent. 45 IAC 15-11-1(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is also to be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

Subsection (d) of IC 6-8.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayer must show that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

In this instance, the taxpayer has shown reasonable cause. The taxpayer has provided to the Department's satisfaction, sufficient justification for why the negligence penalty should be waived.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420020284.LOF

LETTER OF FINDINGS NUMBER: 02-0284 ST
Sales And Use Tax
For Tax Periods: 1998 through 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUE

Sales and Use Tax – Public Transportation Exemption

Authority: IC 6-2.5-3-2, IC 6-2.5-5-27, 45 IAC 2.2-5-61(b), National Serv-All, Inc. v. Indiana Department of State Revenue, 644 N.E. 2d 960 (Ind. Tax 1994), Indiana Waste Systems of Indiana, Inc. v. Indiana Department of State Revenue, 644 N.E. 2d 960 (Ind. Tax 1994), Panhandle Eastern Pipeline Company and Trunkline Gas Company v. Indiana Department of State Revenue, 741 N.E.2d 816 (Ind. Tax 2001)

The taxpayer protests the assessment of tax on a boom for a wrecker, trucks, and truck repair parts.

STATEMENTS OF FACTS

The taxpayer is an Indiana corporation that operates a body shop primarily making repairs to customer owned trucks. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax. The taxpayer protests the assessment of use tax on certain items that it contends were used in public transportation.

Sales and Use Tax – Public Transportation Exemption

DISCUSSION

IC 6-2.5-3-2 imposes the use tax on "the storage, use, or consumption of tangible personal property in Indiana." The department assessed use tax on several items used in the taxpayer's business. The taxpayer contends that the boom for a wrecker, certain trucks, and truck repair parts qualify for the public transportation exemption from the use tax pursuant to the following provisions of IC 6-2.5-5-27:

> Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

The taxpayer supports this contention by citing the definition of public transportation found at 45 IAC 2.2-5-61 (b) as follows:

> Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

The issue to be determined in this case is how the public transportation exemption from the use tax applies to the taxpayer's boom for a wrecker, trucks, and truck repair parts.

The Indiana Tax Court has addressed the issue of public transportation in several cases. The first two cases involved contract hauling of garbage. In National Serv-All, Inc. v. Indiana Department of State Revenue, 644 N.E. 2d 954 (Ind. Tax 1994), the Court stated that although National Serv-All "engaged in 'public transportation' when it hauled Contract garbage," nonetheless National Serv-All did not prove "that its hauling of Contract garbage was the *predominant share* of its use of the items at issue." Id. At 959. (Emphasis in the original). The Court concluded: "Although National engaged in the public transportation of property within the meaning of IC 6-2.5-5-27 when it hauled Contract garbage, it did not prove it predominantly engaged in public transportation." Id. at 960.

The Court faced a similar issue concerning the applicability of the public transportation exemption to the contract hauling of garbage in Indiana Waste Systems of Indiana, Inc. v. Indiana Department of State Revenue, 644 N.E. 2d 960 (Ind. Tax 1994). In that case the Court held as follows:

> Waste Management's maximum annual revenue from public transportation was 17.7 percent of its total revenue, and therefore, the remaining 80 percent of its revenue came from non-public transportation. The predominant use of Waste Management's trucks and other items, therefore, is not exempt...

Id. at 962.

The third case dealing with this issue is Panhandle Eastern Pipeline Company and Trunkline Gas Company v. Indiana

Department of State Revenue, 741 N.E.2d 816 (Ind. Tax 2001). The petitioners were pipeline companies that transported natural gas belonging to third parties and natural gas belonging to the petitioners. In each case, the predominate use of the pipelines was to transport natural gas belonging to others. The Court, after noting the relevance of its two previous cases on public transportation, stated the following.

> If a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, then it is entitled to the exemption. If a taxpayer is not predominately engaged in transporting the property of another, it is not entitled to the exemption.

Id. at 819.

The Indiana Tax Court has set out a two-pronged test to determine if a particular business qualifies for the public transportation exemption from sales and use tax. First the taxpayer must be predominately engaged in public transportation of the property of another. Secondly, the taxpayer's property must be predominately used for providing public transportation.

The first prong looks at the taxpayer itself. A determination must be made whether or not the taxpayer is engaged in public transportation. The second prong looks at the individual units to determine how they are used. Both prongs must be satisfied for the taxpayer to qualify for the public transportation exemption.

In this situation, the taxpayer is primarily engaged in the repair of customer owned motor vehicles. It is not predominately engaged in public transportation. Therefore, having failed the first prong of the test, the taxpayer does not qualify for the public transportation exemption from the sales and use tax for any of the years of the audit. The department does not need to determine whether the taxpayer's use of the one re-supply truck qualifies that truck for the public transportation exemption.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220020311.LOF

LETTER OF FINDINGS NUMBER: 02-0311
Indiana Corporate Income Tax
For the 1998, 1999, and 2000 Tax Years

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Inclusion of Capitation Payments in Taxpayer's Reserve Exclusion – Gross Income Tax

Authority: 45 IAC 1-1-68; 45 IAC 1.1-1-14; 45 IAC 1.1-1-14(a); 45 IAC 1.1-1-14(j); Tax Policy Directive #9, July 1995; Black's Law Dictionary (7th ed. 1999)

Taxpayer maintains that, for purposes of computing its gross income tax liability, it is entitled to include capitation payments in its reserve exclusion.

II. Credit for Payments Made to the Indiana Comprehensive Health Insurance Association

Authority: IC 6-8.1-5-1(b); IC 27-8-10-2.1(a); IC 27-8-10-2.1(f); IC 27-8-10-2.1(g); IC 27-8-10-2.1(n)(1); IC 27-8-10-2.1(n)(2)

Taxpayer argues that the audit erred when it disallowed an income tax credit which taxpayer had claimed for payments made to the Indiana Comprehensive Health Insurance Association (ICHIA).

STATEMENT OF FACTS

The taxpayer is an Indiana Health Maintenance Organization (HMO) currently undergoing liquidation. As part of the liquidation proceedings, the taxpayer's income tax returns for 1998, 1999, and 2000 were reviewed. The audit made two adjustments to the returns which resulted in an assessment of additional corporate income taxes. Taxpayer protested the audit's conclusions, an administrative hearing was conducted, and this Letter of Findings followed.

DISCUSSION

I. Inclusion of Capitation Payments in Taxpayer's Reserve Exclusion – Gross Income Tax

Before undergoing liquidation, the taxpayer was a health maintenance organization (HMO). As such, it provided health care services to a defined, enrolled population of insureds. Individual insureds were each charged an annual premium which was not directly related to the services the insureds received during a particular time period.

The taxpayer contracted with independent third-party physicians to provide the insureds the necessary health care services. The insureds were free to choose one of these participating physicians as the individual insured's primary health care provider. The taxpayer compensated the participating physicians on a capitation basis; for each insured who had chosen a particular physician,

that physician would receive a designated amount each month. The amount of capitation payments each physician received was unrelated to the number of times the individual insureds obtained medical services.

In 1985, taxpayer – together with a number of similarly situated insurance companies – sought and received a Revenue Ruling from the Department of Revenue. The petitioners sought and received a determination that, under 45 IAC 1-1-68, in reporting their taxable receipts, the petitioners as HMOs were entitled to deduct from their gross income an amount equal to the HMO's gross premiums, multiplied by the ratio of claims incurred, to premiums earned during the taxable year. For simplicity's sake, this amount will be hereinafter referred to as the "reserve exclusion." Specifically the Department ruled as follows:

> [I]t is apparent to the Department that HMOs should be treated analogously to traditional health insurance carriers. Accordingly, under the authority of Regulation 45 IAC 1-1-68, [petitioners] shall be permitted, in computing their gross income tax liability, to exclude from gross enrollment fees (i.e., premium income) a corresponding amount computed by multiplying their gross fee premium income by the ratio of medical and hospital care payments made by the HMO to premiums earned by the HMO on an annual basis.

However, following an audit of taxpayer's income tax returns, the audit determined that taxpayer erred in calculating its reserve exclusion. The audit found that "capitation payments were erroneously included." The audit stated that the capitation payments should not have been included because the "capitation payments were a fixed prepayment to doctors, hospitals, etc. to cover members' medical needs regardless of the actual number of services provided to each person." Essentially, because the capitation payments were not an amount "at risk," the audit concluded that the capitation payments should not have been included in the reserve account.

The 1985 Revenue Ruling was issued on January 16, 1985. Pursuant to Tax Policy Directive #9, July 1995, the 1985 ruling was "declared null and void and of no effect for tax years beginning after December 31, 1996." Nonetheless, it is reasonable to assume that the 1985 Revenue Ruling correctly interpreted the pertinent gross income tax regulations in effect at the time the original ruling was first issued.

The 1985 Revenue Ruling interpreted 45 IAC 1-1-68, "Explanation of Lines 1 through 5: Underwriting Income" under that portion of the regulation related to "Accident and Health Insurance." In pertinent part, that section reads as follows:

> 3. For classes of business on which reserves comparable to life insurance reserves are maintained – use company records of net premiums for such business... with respect to such classes of business as noncancellable accident and health insurance.
>
> 4. For other accident and health business or hospitalization multiply the gross premiums for such business included in line 1, Column 1, by the ratio of claims incurred... to premiums earned... for such other accident and health insurance, e.g., groups, and other short-term cancelable accident and health policies.

The 1985 Revenue Ruling interpreted the 45 IAC 1-1-68 to mean that traditional health insurers were entitled to exclude from their gross income a reserve amount sufficient to pay its insureds' anticipated health care costs. For example, if an individual insured paid $2,000 for one year's coverage, the $2,000 would constitute the insurer's "gross premiums." Thereafter, the traditional insurer was entitled – based upon its past claims experience – to exclude from its gross income an amount necessary to pay the insured's anticipated medical costs for the covered year. For purposes of this example, the insured might determine that $1,500 was necessary to pay those anticipated costs. The amount of its "reserve exclusion" would, of course, be based upon the insurer's claim experience over a very large number of its insureds. Based upon that larger pool of insureds, the $1,500 individual reserve – multiplied by the total number of similar insureds – would be expected to cover the total medical expenses for the entire pool.

For reasons not relevant here, HMO's operate differently. Assuming that one of taxpayer's own insureds paid taxpayer $2,000 for one years worth of individual health care coverage, the taxpayer would thereafter make capitation payments to the health care provider selected by that particular insured. The taxpayer might make $100 monthly capitation payments to the physician; in this example, the physician would receive $1,200 over the course of that year. The amount of capitation payments would be based upon on the anticipated health care costs for that single insured. However, the physician would receive the $1,200 regardless of the number of times the insured sought and received services from the provider.

The language contained within the 1985 Revenue Ruling is straightforward. The ruling states that, "HMOs should be treated analogously to traditional health insurance carriers." The reserve amount, maintained by traditional health insurers, is analogous to the capitation payments paid by HMOs to their physicians. Although the amount of the reserve might be considered an amount "at risk," in reality, the difference between the reserve amount and the capitation payments is simply one of semantics and is not reflected in practical reality. Both the reserve amount and the capitation payments reflect the insurers' determination – based upon past claims experience – of the cost of providing medical services for a particular pool of insureds. Regardless of the appropriateness of providing such an exclusion, 45 IAC 1-1-68, as interpreted by the 1985 Revenue Ruling, permits both traditional health insurers and HMOs to treat, for gross income tax purposes the amount paid to health care providers, as "pass through" income having no gross income tax effect for the traditional health insurer *or* the HMO.

However, the taxpayer lodges its protest based upon gross income tax assessments for 1998, 1999, and 2000. The determination above applies only to the 1998 assessment made against the taxpayer because, on January 1, 1998, the regulations governing the gross income tax law were revised. Thereafter, 45 IAC 1.1-1-14 governs the issues raised by taxpayer concerning the capitation payments.

The regulation states, in relevant part, as follows:

Except as otherwise provided in this section, "gross income of an insurance carrier" means the total amount of premiums, interest, dividends, commissions, rents, and other earnings with respect to conducting the business of an insurance. The term does not include the following: (1) The amount of gross earnings which becomes or is used to maintain a policy reserve or other policy liability, to the extent that the insurance carrier is required to maintain the policy reserve or other policy liability by the department of insurance. 45 IAC 1.1-1-14(a).

Also relevant to taxpayer's argument is the 45 IAC 1-1-14(j) which states that "[f]or purposes of this section and 45 1.1-6-11, a health maintenance organization licensed under IC 27-13 shall be treated the same as an insurance carrier selling accident and health insurance on all income from providing prepaid health care."

Because the 1985 Revenue Ruling expired in 1995 and, because 45 IAC 1-1-68 was replaced in 1999, 45 IAC 1.1-1-14(a), (j) governs taxpayer's 1999 and 2000 claims. 45 IAC 1.1-1-14(a) permits an insurer to exclude from its gross income an amount sufficient "to maintain a policy reserve." A "policy reserve" is defined as "[a]n insurance company's reserve that represents the difference between net premiums and expected claims for a given year." Black's Law Dictionary 1308 (7th ed. 1999). More generally, a "reserve" is defined as "a fund of money set aside by a bank or an insurance company to cover future liabilities." Id.

Resorting again to the example first cited above – in which the insured paid a yearly premium of $2,000 and the HMO insurer made capitation payments of $1,200 – the amount of "net payment" is $2,000 and the amount of "expected claims" is $1,200. The difference between the two figures is, of course, $800. The $800 represents the insurance company's cost of operations, profits, and those medical costs which are not covered by the capitation payments.

It is apparent that taxpayer's capitation payments do not come within the designation of a "policy reserve" as defined under 45 IAC 1.1-1-14(a) because those particular payments are not "set aside by... an insurance company to cover future liabilities." As set out in the prior example, the HMO insurer would be entitled to set aside a portion of the $800 to pay for those medical expenses not covered by the capitation payments. It is this amount – not the capitation payments – which may be included within the reserve exclusion allowed under 45 IAC 1.1-1-14(a). The 1999 and 2000 capitation payments are within the definition of "gross income of an insurance carrier" and are properly subject to the gross income tax.

Therefore, based upon the 1985 Revenue Ruling and its interpretation of 45 IAC 1-1-68, taxpayer's capitation payments may be included in its 1998 gross income tax reserve exclusion. However, based upon the fact that the 1985 Revenue Ruling expired in 1996 and that 45 IAC 1.1-1-14 replaced the prior regulation, taxpayer is not entitled to include the capitation payments in its 1999 or 2000 gross income tax reserve exclusion.

FINDING

Taxpayer's protest is sustained in part and denied in part.

II. Credit for Payments Made to the Indiana Comprehensive Health Insurance Association

Taxpayer was a member of the Indiana Comprehensive Health Insurance Association. (*Hereinafter* "ICHIA"). ICHIA is a non-profit legal entity that provides health insurance to Indiana residents who cannot obtain private insurance. IC 27-8-10-2.1(a). All Indiana health insurance carriers, such as taxpayer, which provide health insurance or health care services within the state are required to be members of ICHIA. Id. Because ICHIA is required to charge rates which "may not be unreasonable in relation to the benefits provided..." (IC 27-8-10-2.1(f)), ICHIA usually generates losses rather than profits. ICHIA recovers those losses by making assessments to its members in proportion to the amount of health insurance premiums that the members earn during each year. IC 27-8-10-2.1(g). However, each member is thereafter permitted to take a credit against its state income tax liability up to the amount of the assessment paid to ICHIA. IC 27-8-10-2.1(n)(1). Alternatively, the member is entitled to recoup the assessment by passing along the cost to its own insureds. IC 27-8-10-2.1(n)(2). However, the members may not do both; the insurer may either take the credit against their income tax *or* pass the ICHIA assessment along to its own insureds in the form of increased premium costs.

The audit determined that taxpayer had claimed the credit in calculating its gross income. Although taxpayer was able to provide documentation that the amounts claimed were actually paid to ICHIA, it was unable to provide verification that the amounts had not also been included in its premium base. Specifically, taxpayer was asked to provide a statement from the head of its actuarial department attesting that the ICHIA payments were not included in the premium base. However, taxpayer's representatives were unable to do so because, according to the representatives, taxpayer's former officers were unwilling to supply the requested information.

Taxpayer argues that the ICHIA payments could not have been included in the premium base because taxpayer did not charge premium rates sufficient to recoup its expenses. According to taxpayer, this is evidenced by the fact that taxpayer accumulated a substantial retained deficit at the time it entered into liquidation.

The fact that the taxpayer sustained substantial losses is not alone sufficient to warrant a finding that the assessment was incorrect. It is entirely possible that taxpayer, despite indications that it incurred substantial financial losses, erroneously claimed the ICHIA payments as a credit on its income tax and erroneously included the payments in its premium base.

Under IC 6-8.1-5-1(b), the taxpayer bears the burden of demonstrating that the proposed assessment is incorrect. The statute establishes that "[t]his notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid.

The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer submitted affidavits purporting to establish that it did not recoup the ICHIA payments in its premium rate amounts and that it was legitimately entitled to claim credit against its income tax in accordance with IC 27-8-10-2.1(n)(1). Taxpayer included an affidavit from the Commissioner of the Indiana Department of Insurance. The Commissioner somewhat circumspectly stated that the "[Commissioner was] in no manner acknowledging the validity of the [taxpayer's] claim...." However, the Commissioner also noted that taxpayer's contention, that it was unable to recoup the ICHIA payment via increases to its premium rates, was consistent with taxpayer's earlier assertions set out in an action brought by taxpayer – together with two other HMOs licensed in the state of Indiana – against ICHIA and the Commissioner.

Taxpayer submitted an affidavit prepared by the taxpayer's former vice-president and general manager. The affiant's former responsibilities included "overall development of the operating budget and strategic plan for the company." In addition, the affiant stated that she was "privy to and participated in the process whereby [taxpayer] developed its premium rates...." Further, the affiant stated that, "it was not economically feasible for [taxpayer] to increase premiums to recover ICHIA assessments above its annual tax credits" and that "[t]o increase premiums to recover the excess amount of accrued ICHIA assessments would have put [taxpayer] at a competitive disadvantage in a highly competitive market...." The affiant further stated that "there was never a line item added during the development of [taxpayer's] premium rates, or during the filing of such rates with the Indiana Department of Insurance, to recoup ICHIA Assessments pursuant to Ind. Code § 27-8-10-2.1(n)(2)."

Taxpayer submitted an affidavit prepared by a consulting actuarial. The actuarial was employed by the Indiana Department of Insurance. During that time, the actuarial was required to review rate filings submitted by various HMOs including taxpayer's own rate filings. The actuarial reviewed the taxpayer's rate filings which would have been effective in 1998, 1999, and 2001. The actuarial indicated that there was no reference in the rate filings "indicating or otherwise suggesting that [taxpayer], in accordance with the terms of I.C. § 27-8-10-2.1(n), included in its premium rate calculations amounts sufficient to recoup the... ICHIA assessments, or any portions thereof."

Under IC 6-8.1-5-1(b), the taxpayer has met its burden of demonstrating that the proposed assessment is incorrect.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0120020426.LOF

LETTER OF FINDINGS NUMBER: 02-0426
Indiana Individual Income Tax
For the Tax Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax – Imposition

Authority: Rockland R. Snyder v. Indiana Department of Revenue, 723 N.E.2d 487 (Ind. Tax 2000); IC 6-3-1-3.5; IC 6-8.1-4-2; 45 IAC 3.1-1-1; 45 IAC 3.1-1-2; Black's Law Dictionary, 6th Ed., 1579 (West Publishing, 1990)

Taxpayer protests imposition of Indiana Individual Income tax.

STATEMENT OF FACTS

Taxpayer filed a 2001 Indiana individual income tax return on which he reported that his Federal adjusted gross income was "0" (zero). The Indiana Department of Revenue ("Department") issued a proposed assessment for 2001 individual income taxes. Taxpayer protests this assessment. Further facts will be provided as necessary.

DISCUSSION

Taxpayer protests the Department's proposed assessment of 2001 individual adjusted gross income tax. Taxpayer filed a 2001 Indiana individual income tax return with Federal adjusted gross income reported as "0" (zero). The Department reviewed the documentation available to it and, after determining that taxpayer received pension payments during the tax period, issued a proposed assessment for 2001. Taxpayer protests that, since he reported "0" on his Federal tax return, he was compelled to report his income as "0" on his Indiana tax return or commit perjury. Taxpayer presented several Federal cases, which he believes support his position that pension payments are not income.

Taxpayer presents arguments that have been made before. The Indiana Tax Court dealt with an identical argument in Rockland R. Snyder v. Indiana Department of Revenue, 723 N.E.2d 487 (Ind. Tax 2000). In that case, the Court wrote:

Indiana relies upon the Internal Revenue Code's definitions for gross and adjusted gross income. Even so, in ascertaining whether Snyder is liable for his unpaid state adjusted gross income taxes, this Court is not obligated to adopt the federal courts' interpretations of income under I.R.C. § 61(a). However, their interpretations are certainly persuasive in this matter. Common definition, an overwhelming body of case law by the United States Supreme Court and federal circuit courts, and this Court's opinion in *Thomas* all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax. Snyder, at 491.

The word "Wages" is defined as, "A compensation given to a hired person for his or her services. Compensation for employees based on time worked or output of production." Black's Law Dictionary, 6th Ed., 1579 (West Publishing, 1990). The word "Pension" is defined as, "Retirement benefit paid regularly (normally, monthly), with the amount of such benefit based generally on length of employment and amount of wages or salary of pensioner. *Deferred compensation for services rendered."* Black's 6th ed, at 1134, (emphasis added). Therefore, pensions are simply deferred wages.

The Department refers to 45 IAC 3.1-1-1, which states:

Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:

(1) Begin with gross income as defined in section 61 of the Internal Revenue Code.

(2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.

(3) Make all modifications required by IC 6-3-1-3.5(a).

Also, IC 6-3-1-3.5 states in relevant part:

When used in IC 6-3, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

….

The statute then lists Indiana's modifications to Federal adjusted gross income. The instructions on the tax form are there to show taxpayers where to put numbers. IC 6-3 and its accompanying statutes and regulations inform taxpayers what numbers to put on the form. The wording on the form does not relieve a taxpayer of the duty to accurately report income as defined in the Internal Revenue Code.

Next, the Department refers to 45 IAC 3.1-1-2, which states in relevant part:

Indiana residents must report all income as defined by § 61of the Internal Revenue Code. Sources of income include, but are not limited to:

…

(11) Pensions

As part of the written protest, taxpayer stated that the Department needed to show where in the Indiana statutes it gives anyone the right to change his tax return. The Department refers to IC 6-8.1-4-2, which states:

(a) The division of audit may:

(1) have full prompt access to all local and state official records;

(2) have access, through the data processing offices of the various state agencies, to information from government and private sources that is useful in performing its functions;

(3) inspect any books, records, or property of any taxpayer which is relevant to the determination of the taxpayer's tax liabilities;

(4) detect and correct mathematical errors on taxpayer returns;

(5) detect and correct tax evasion;

(6) employ the use of such devices and techniques as may be necessary to improve audit practices.

(emphasis added)

This statute gives the Department the right to change a taxpayer's tax return.

At the administrative hearing, taxpayer provided several federal tax cases as support for his protest. These cases dealt with federal taxation of corporations (primarily on capital gains), rather than state taxation of an individual's adjusted gross income. As these cases are not relevant to Indiana adjusted gross income tax for individuals, the Department will not discuss them further.

In conclusion, the Department determined that taxpayer received pension payments during 2001, and has the right under IC 6-8.1-4-2(a) to change taxpayer's tax return. Pensions are deferred wages and the Indiana Tax Court has already determined that wages are income for purposes of Indiana's adjusted gross income tax, as explained in Snyder. 45 IAC 3.1-1-2 explicitly states that pensions are to be reported as income. Taxpayer was required to report on his Indiana form income as defined in section 61 of the Internal Revenue Code.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120020427.LOF

LETTER OF FINDINGS NUMBER: 02-0427
Indiana Individual Income Tax
For the Tax Year 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Imposition of State's Individual Income Tax by Reference to Taxpayer's Federal Adjusted Gross Income

Authority: Ind. Const. art. I, § 25; Ind. Const. art. IV, § 1; Ind. Const. art. X, § 8; IC 6-3-1-3.5; Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); Ind. Dept. of Envtl. Management v. Chemical Waste Management, Inc., 643 N.E.2d 331 (Ind. 1994); Campbell v. Heiss, 53 N.E.2d 634 (Ind. 1944); Bissell Carpet Sweeper Co. v. Shane Co., 143 N.E.2d 415 (Ind. 1957); 45 IAC 3.1-1-1

Taxpayer argues that because he reported "0" income on his Federal income tax return, he was compelled to report "0" income on his state return for that same year. In addition, taxpayer maintains that, under the Indiana Constitution, the state may not impose a state income tax by reference to the Federal Internal Revenue Code.

II. Imposition of the State's Individual Income Tax on Taxpayer's Wages

Authority: Ind. Const. art. X, § 8; IC 6-3-1-3.5 et seq.; Butchers' Union Slaughter-House v. Crescent City Live-Stock, 111 U.S. 746 (1884); New York v. Graves, 300 U.S. 308 (1937); Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509 (1921); Doyle v. Mitchell, 247 U.S. 179 (1918); United States v. Connor, 898 F2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F2d 1328 (7th Cir. 1984); United States v. Ballard, 535 F.2d 400 (8th Cir. 1976); United States v. Romero, 640 F2d 1014 (9th Cir. 1981); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994)

Taxpayer argues that he did not receive taxable "income" because the exchange of labor for pay of equal value does not produce "income."

III. Payment of the Indiana Income Tax is Voluntary

Authority: IC 6-8.1-11-2; Helvering v. Mitchell, 303 U.S. 391 (1938); United States v. Gerads, 999 F.2d 1255 (9th Cir. 1993); McLaughlin v. United States, 832 F.2d 986 (7th Cir. 1987); McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985)

Taxpayer maintains that payment of the state's income tax is entirely voluntary and that he no longer "volunteers" to pay state income tax.

IV. Sufficiency of Taxpayer's Indiana Tax Return

Authority: 45 IAC 15-5-7; 45 IAC 15-5-7(f)(1)

Taxpayer argues that he fulfilled his obligations under the federal and state's adjusted gross income tax laws because he submitted a return which had been completed by writing a series of "zeroes."

STATEMENT OF FACTS

Taxpayer prepared and submitted an Indiana income tax return for 2000 in which he reported receiving "0" adjusted gross income. The Department of Revenue (Department) disagreed and subsequently sent taxpayer notices indicating that he owed unpaid state income taxes. Taxpayer answered the notices stating that the assessments were erroneous based upon various legal arguments. Taxpayer demanded the opportunity for a hearing during which he would have the opportunity to explain the basis for his protest. That opportunity was granted, and this Letter of Findings follows.

DISCUSSION

I. Imposition of State's Individual Income Tax by Reference to Taxpayer's Federal Adjusted Gross Income

Taxpayer has set out numerous arguments challenging the legitimacy of the state's income tax scheme. Those arguments have been grouped into the four general sections set out in this Letter of Findings. Taxpayer's first arguments challenge generally the legitimacy of the state's practice of referencing the federal rules in interpreting and applying the state's own tax laws.

A. Delegation of State Legislative Authority

Taxpayer argues that, "Nowhere in the Indiana Constitution did the people of this state give any power to the federal government to make laws exclusively for those living in Indiana." In effect, taxpayer argues that the Indiana Constitution does not permit references to another taxing jurisdiction's own laws and when faced with such an improper reference – such as that found within IC 6-3-1-3.5 – the taxpayer's compliance is not required.

Specifically, taxpayer cites to Ind. Const. art. I, § 25 which states that, "No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution." This section of the state constitution is intended

to place a limit on "the legislative activity of the General Assembly." Ind. Dept. of Envtl. Management v. Chemical Waste Management, Inc., 643 N.E.2d 331, 341 (Ind. 1994).

The Indiana Constitution vests all legislative authority in the Indiana General Assembly. "The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: 'Be it enacted by the General Assembly of the State of Indiana': and no law shall be enacted, except by bill." Ind. Const. art. IV, § 1. Taxpayer is correct in his assertion that, under Ind. Const. art. I, § 25 and art. IV, § 1, the Indiana General Assembly may not delegate either its authority or its responsibility for performing its exclusively legislative functions. "The power to legislate or to exercise a legislative function cannot be delegated to a non-governmental agency or person. Nor can the Legislature delegate its law-making power to a governmental officer, board, bureau or commission." Bissell Carpet Sweeper Co. v. Shane Co., 143 N.E.2d 415, 419 (Ind. 1957) (Internal citations omitted).

On its face, taxpayer's contention appears to have merit. The Indiana General Assembly may not delegate its responsibility for defining the state's adjusted gross income tax scheme to the federal government. Neither may the Assembly's authority to implement such a scheme be obtained under federal law. However, the cross-references to the Internal Revenue Code – such as I.R.C. § 62 cited within IC 6-3-1-3.5 – does not delegate any such authority. The state legislature did not turn over its authority to the federal government. The state legislature did not obtain its authority from the federal government. Ind. Const. art. X, § 8 unambiguously states that, "The general assembly may levy and collect a tax upon income from whatever source derived...." The Indiana Code provisions reflect merely the legislature's considered and independent decision to employ the federal calculation as the starting point for determining Indiana's adjusted gross income tax. "It is well settled that a legislative body may enact a law, the operation of which depends upon the existence of a stipulated condition." Campbell v. Heiss, 53 N.E.2d 634, 636 (Ind. 1944). The state legislature has retained its independent authority to define and enforce the state's own income tax plan. That the Indiana General Assembly has retained authority to stake out the parameters of the state's adjusted gross income tax scheme is evidenced by the Assembly's decisions to periodically reenact IC 6-3-1-3.5 the latest of which occurred in 2001. Whether the General Assembly should have avoided internal references to the Internal Revenue Code by independently drafting original statutory provisions mirroring the Internal Revenue Code and then require every Indiana taxpayer to recalculate his taxable income, is an issue beyond the scope of this Letter of Findings and irrelevant to determining taxpayer's tax liability. Suffice it to say that the General Assembly acted entirely within its authority in employing the federal adjusted gross income as the jumping off point for calculating the individual taxpayer's Indiana adjusted gross income.

B. Taxpayer's Reported Federal Income Tax

Taxpayer makes a somewhat related argument. Taxpayer argues that he accurately reported his income by placing "zeroes" on his state tax return. Taxpayer bases this argument by stating that he had no legal alternative because he had also placed "zeroes" on his federal return. Taxpayer rhetorically asks, "Should I have perjured myself and claimed that I reported something other than the 'zeroes' I reported on my Federal tax returns for my Gross Income."

A copy of taxpayer's federal income tax return indicates that taxpayer did indeed fill out the form by placing numerous zeroes on that form. It is undisputed that the Indiana tax return for the tax year 2000 employs federal adjusted gross income as the starting point for determining the taxpayer's state individual income tax liability. Line one of the IT-40 form requires the taxpayer to "Enter your federal adjusted gross income from your federal return (see page 9)."

IC 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code)...." Thereafter, the statute proceeds to delineate specific addbacks and deductions, peculiar to Indiana, which modify the federal adjusted gross income amount. The Department's regulation concisely restates the same formulary principal. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

> Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" is "Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:
>
> (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
>
> (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
>
> (3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require that an Indiana taxpayer employ the federal adjusted gross income calculation, as determined under I.R.C. § 62, as the starting point for determining that taxpayer's Indiana adjusted gross income.

Taxpayer's contention – that he was compelled by force of law to declare "0" as Indiana adjusted gross income because he declared "0" on his federal return – is patently without merit. The statute is plain and unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 62, not as reported by the taxpayer. *See* Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The directions contained within the Indiana income tax form provide the individual taxpayer with abbreviated directions for completing the form and not the means for determining the taxpayer's adjusted gross income. The Indiana tax form instructs the taxpayer to put what number in what box. Those directions

notwithstanding, taxpayer is nonetheless required to actually perform the calculations necessary to determine his liability for Indiana adjusted gross income tax.

FINDING

Taxpayer's protest is denied.

II. Imposition of the State's Individual Income Tax on Taxpayer's Wages

Taxpayer's next argument is that he did not receive any "income" because he only exchanged his labor – one form of property – for money – another form of property. Therefore, because taxpayer did not receive any "gain" but merely a "like-kind" exchange, he received no taxable income.

In support of this proposition, taxpayer cites to Butchers' Union Slaughter-House v. Crescent City Live-Stock, 111 U.S. 746, 757 (1884), which states in part:

> The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable... to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property.

Taxpayer's exact legal proposition is somewhat ambiguous; however, the argument seems to be that the government – by means of an income tax scheme – may not interfere with the individual citizen's right to exchange his labor for wages and that the wages he receives do not constitute "income." Liberally construed, taxpayer's argument is that – for purposes of determining income tax liability – "income" can only be derivative of corporate activity. Therefore, as an individual Indiana resident who by definition did not receive "corporate" income, taxpayer is not subject to the state's adjusted gross income tax.

In support of that proposition, taxpayer cites to a number of Supreme Court cases including Doyle v. Mitchell, 247 U.S. 179 (1918); Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509 (1921); and a federal circuit court case, United States v. Ballard, 535 F.2d 400 (8th Cir. 1976).

In Doyle, the Court stated that "Whatever difficulty there may be about a precise and scientific definition of 'income' it imports... the idea of gain or increase arising from corporate activities." Doyle at 185. In Smietanka, the Court stated that, "There can be no doubt that the word [income] must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the Act of 1913." Smietanka at 519. Similarly, the same Court stated, "there would seem to be no room to doubt that the word must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act and that what that meaning is has now become definitely settled by decisions of this court." Id. Taxpayer reads these and the cited companion cases as supporting the proposition that the federal income tax – and by extension Indiana's adjusted gross income tax – can only be levied against corporate gain. According to taxpayer, the cases inevitably lead to the conclusion that "income" – as referred to within both the federal and companion state statutes – is exclusively limited to that definition as established under the Civil War Income Tax Act of 1867; the Corporation Excise Tax Act of 1909; and the Income Tax Acts of 1913, 1916, and 1917.

However, the cited cases do not permit such a conclusion. In the cases cited by taxpayer, the Court was asked to determine the definition of corporate income. In Doyle, the Supreme Court was asked to resolve the issue of whether the increase in value of the corporate taxpayer's standing timber constituted "income." In determining that the increase in value did not constitute corporate "income," the Court stated that the definition of corporate income had remained unchanged during the intervening recodifications of the federal corporate income tax and the ratification of the Sixteenth Amendment to the United States Constitution. In Smietanka – resolving the issue of whether a provision in a will, stipulating that accretions in the value of testamentary property should be considered additions to principal and not income – the court similarly noted that the definition of "income" had remained unchanged. The Court went on to state that. "In general, income is the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets...." Smietanka at 519.

The cited cases support the proposition that corporate gain is subject to the existing federal corporate income tax scheme. The cited cases do nothing to support the assertion that *only* corporate gain is subject to the tax. Simply stated, if the courts are asked to define "corporate income," the courts will arrive at a conclusion which defines "corporate income."

In United States v. Ballard, 535 F.2d 400 (8th Cir. 1976), the court stated, in determining appellant taxpayer's individual income tax liability, that, "The general term "income" is not defined in the Internal Revenue Code." Id. at 404. Rather, the court noted that the Internal Revenue Code operates under and employs the term "gross income." Id. However, nothing in Ballard can be read to support the proposition that the federal adjusted gross income tax is only applicable to corporate gain or that individual taxpayer's wages are not subject to imposition of the federal adjusted gross income tax. To the contrary, the court found that appellant taxpayer was liable for additional income taxes on wages received from his business. Id. at 405.

The question of what constitutes individual taxable "income" has been answered by the courts. Although not binding upon Indiana's decision to tax the wages of its own citizens, the United States Supreme Court has definitively ruled on the question of whether a citizen's individual income may be subjected to an adjusted gross income tax. In New York v. Graves, 300 U.S. 308, 312-13 (1937), Justice Stone stated as follows:

> That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right

> to invoke the protection of its laws are inseparable from the responsibility for sharing the costs of government.... A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits. The tax, which is apportioned to the ability of the taxpayer to pay it, is founded upon the protection afforded by the state to the recipient of the income in his person, in his right to receive the income and in his enjoyment of it when received. These are rights and privileges which attach to domicil within the state. To them and to the equitable distribution of the tax burden, the economic advantage realized by the receipt of income and represented by the power to control it, bears a direct relationship. *Neither the privilege nor the burden is affected by the character of the source from which the income is derived.* (*Emphasis added*).

Since that 1937 decision, the federal courts have consistently, repeatedly, and without exception determined that individual wages – no matter in what form the taxpayers have attempted to characterize, define, or label those wages – are income subject to taxation. United States v. Connor, 898 F2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable.") (Emphasis in original); United States v. Romero, 640 F2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable.... [Taxpayers] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves.").

In addressing the identical question, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United Sates Supreme Court and federal circuit courts, and this Court's opinion... all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayers' distinctions aside, taxpayer's income – by whatever linguistic device the taxpayer may wish to characterize that income – is subject to Indiana's adjusted gross income tax as defined by the General Assembly under IC 6-3-1-3.5 et seq. and as authorized by the Indiana Constitution. Ind. Const. art X, § 8.

FINDING

Taxpayer's protest is denied.

III. Payment of the Indiana Income Tax is Voluntary

Taxpayer argues that payment of Indiana individual income tax is voluntary and that he no longer volunteers to pay the tax. Taxpayer cites to IC 6-8.1-11-2 which states as follows:

> The general assembly makes the following findings: (3) The Indiana tax system is based largely on *voluntary compliance*. (4) The development of understandable tax laws and the education of taxpayers concerning the tax laws will improve *voluntary compliance* and the relationship between the state and taxpayers. (*Emphasis added*).

Taxpayer's argument is without merit. In describing the nature of the federal tax system, the Court has stated that, "In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil." Helvering v. Mitchell, 303 U.S. 391, 399 (1938).

Taxpayer's basic contention – that Indiana depends on its citizens' voluntary compliance with the tax laws – is undeniable. Indeed, the state also depends on its licensed drivers to drive on the right side of the road. However, that does not mean that failure to comply with the law is without predictable consequences. "Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary." United States v. Gerads, 999 F.2d 1255, 1256 (9th Cir. 1993). "The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation, but despite [appellant's] protestation to the contrary, has been repeatedly rejected by the courts." McLaughlin v. United States, 832 F.2d 986, 987 (7th Cir. 1987). "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income', and maintaining that *payment of taxes is a purely voluntary function do not comport with common sense - let alone the law.*" McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (Emphasis Added). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." Id. at *1.

FINDING

Taxpayer's protest is denied.

IV. Sufficiency of Taxpayer's Indiana Tax Return

Taxpayer points out that filled out his IT-40 income tax return with numerous "zeroes" and that by filling in the paper with "zeroes" he has fulfilled his obligations as a resident of the state. In support of this proposition, taxpayer cites to 45 IAC 15-5-7

which states in part that, "Any denotion by the taxpayer which clearly indicates a positive denial of liability for any tax listed on the tax form shall constitute a completed return. Thus, a return which has 'zero,' or '0' or 'none' written on a given line is not substantially blank." 45 IAC 15-5-7(f)(1).

Taxpayer makes a jaw-dropping leap of logic. The regulation which taxpayer cites relates to "the statute of limitations for the assessment of a listed tax liability...." 45 IAC 15-5-7(a) and has nothing whatsoever to do with whether taxpayer is responsible for paying Indiana income tax during the year 2000. The Department does not contend that taxpayer failed to send in his 2000 return. The Department does not disagree that, for purposes of taxpayer's 2000 return, the three-year statute of limitations specified under 45 IAC 15-5-7 began to run "from the due date of the annual return... or the date on which the annual return [was] filed."

Taxpayer's contention – that he has fulfilled his obligations under the state's tax laws and his shared obligations to the citizens of this state by filling out a piece of paper with "zeroes" – is frivolous.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

2820020452.LOF

LETTER OF FINDINGS NUMBER: 02-0452 CSET
Controlled Substance Excise Tax
For Tax Periods: 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-19(2); IC 6-7-3-5; IC 6-8.1-5-1(b)

The taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

On April 13, 2000 cocaine was found in the taxpayer's car. The appropriate county prosecutor sent the Indiana Department of Revenue, hereinafter the "department," a letter requesting that the department institute a controlled substance excise tax investigation. The department issued a Record of Jeopardy Finding, Jeopardy Assessment, Notice and Demand on July 18, 2002 in a base tax amount of $35,957.60. The taxpayer protested the assessment. A telephone hearing was held to determine if the controlled substance excise tax was properly imposed.

Controlled Substance Excise Tax: Imposition

DISCUSSION

The department can only commence an investigation into and collection of controlled substance excise tax after it is notified pursuant to the terms of IC 6-7-3-19 (2) as follows:

> ... in writing by the prosecuting attorney of the jurisdiction where the offense occurred that the prosecuting attorney does not intend to pursue criminal charges of delivery, possession, or manufacture of the controlled substance that may be subject to the tax required by this chapter.

In this case, the department received this notification by letter from the taxpayer's county prosecutor in the following words:

> This office requests that a Controlled Substance Excise Tax assessment be prepared on the drugs regarding **STATE VS. JOSE A. BALLESTEROS** under **CAUSE #45G04-004-CF-00080**. This office will not be prosecuting this matter due to the suppression of the evidence.

The taxpayer argues that the prosecutor's letter does not meet the requirements of the controlled substance excise tax imposition statute because the prosecutor did not voluntarily decide not to prosecute. Rather, the prosecutor was forced not to prosecute due to the Court's suppression of evidence. The department does not find this argument persuasive. The statute merely states that the prosecutor must indicate that he "does not intend to pursue criminal charges." The statute does not indicate a time frame within which the prosecutor must make this decision. Neither does the statute specify a necessary motivation on the part of the prosecutor. In his letter to the department, the prosecutor clearly writes that he, "will not be prosecuting this matter." That statement conforms to the statutory requirements for imposition of the controlled substance excise tax.

The taxpayer also argues that the department should not consider as evidence the cocaine that the Sheriff found in the taxpayer's car since it was ruled inadmissible in a criminal trial. Tax matters are, however, civil actions. The department has consistently considered evidence that was suppressed for the purposes of a criminal trial. There is no persuasive reason to change that policy in this matter.

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of cocaine in the State of Indiana. Departmental assessments are presumed to be correct and the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b). The taxpayer admitted that he was the driver and only occupant of the car where the cocaine was found and that he was transporting the cocaine for another party. This constitutes the possession of cocaine. The taxpayer did not sustain his burden of proving that the controlled substance excise tax was improperly imposed.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120020482.LOF

LETTER OF FINDINGS NUMBER: 02-0482
Individual Income Tax
For the Tax Year 1999

NOTICE: Under 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Taxpayer's Indiana Income Tax Exemptions

Authority: IC 6-3-1-3.5(a)(3), (4); IC 6-3-1-3.5(a)(5)(A); IC 6-8.1-3-3(a); Johnson County Farm Bureau v. Dep't of Revenue, 568 N.E.2d 578 (Ind. Tax Ct. 1991); 45 IAC 3.1-1-5(b)(4)

Taxpayer argues that the Department erred in its assessment of additional income taxes on the ground that taxpayer overstated the number of exemptions claimed on his 1999 Indiana individual income tax return.

STATEMENT OF FACTS

Taxpayer filed a joint 1040 federal return reporting income received during 1999. On the 1040 return, taxpayer claimed three exemptions. Taxpayer claimed himself, his wife, and one dependent child as exemptions. Nevertheless, taxpayer states that he was entitled to claim four exemptions on the federal return.

Thereafter, taxpayer filed a joint IT-40 state return reporting income received during 1999. On the IT-40 return, taxpayer claimed four exemptions including an "additional exemption" for a total of two dependent children.

On July 30, 2002, the Department issued taxpayer a notice of "Proposed Assessment." The assessment of additional taxes was apparently based on the facial inconsistency between taxpayer's federal and state 1999 returns. The Department's notice stated that, "We have compared the federal adjusted gross income and exemptions reported on your federal and state tax returns for the indicated taxpayer period. These amounts do not agree as they should."

Taxpayer protested the additional tax assessment, an administrative hearing was conducted, and this Letter of Findings results.

DISCUSSION

I. Taxpayer's Indiana Income Tax Exemptions

In preparing his 1999 federal return, taxpayer determined – for reasons not immediately relevant – that it would be advantageous to claim three exemptions on his federal return despite believing that he was legitimately *entitled* to claim a total of four exemptions. On his federal return, taxpayer claimed himself, his wife, and the first of his dependent children as exemptions. Taxpayer chose not to claim a second dependent child on the federal return.

However, taxpayer argues that he was legitimately entitled to claim all four exemptions on his state return even though he chose to claim only three on the corresponding federal return. Taxpayer maintains that his decision, not to claim the second of his two dependent children on the federal return, did not preclude him from claiming that second child on the state return.

Insofar as relevant to taxpayer's "Line 8" deductions, IC 6-3-1-3.5(a)(3), (4) states that the Indiana taxpayer is to "Subtract one thousand dollars ($1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars ($1,000). Subtract one thousand dollars ($1,000) for each of the exemptions provided by Section 151(c) of the Internal Revenue Code. Insofar as relevant to taxpayer's "Line 9" deductions, IC 6-3-1-3.5(a)(5)(A) permits an Indiana taxpayer to "subtract one thousand ($1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996."

The statutory formula is straightforward; an Indiana taxpayer may claim a $1,000 exemption on line 8 of his Indiana return if that exemption is allowed under I.R.C. § 151(c). The Indiana taxpayer may claim a $1,500 deduction on line 9 of his Indiana return if that exemption is allowed under I.R.C. § 151(c)(1)(B). There is nothing apparent in the statute which requires – as a condition precedent to claiming those Indiana exemptions – that the taxpayer first claim the identical exemptions on his federal return.

The explanatory language on the 1999 IT-40 return is equally straightforward; line eight on the form states that the taxpayer is to report the "[n]umber of exemptions claimed on your federal return." The IT-40 also states that the taxpayer is entitled to claim an [a]dditional exemption for certain dependent children" and to report that number on line nine.

Relevant to line eight, the Department's accompanying instructional booklet states that, "You are allowed a $1,000 exemption on your Indiana tax return for each exemption *you claim on your federal return*." (*Emphasis added*). Relevant to line nine, the booklet states that, "An additional exemption, which has been increased to $1,500, is allowed for certain dependent children."

On their face, the IT-40 directions would seem to preclude taxpayer from claiming the second dependent child – a total of four exemptions – on his state return when he declined to report the otherwise qualifying second dependent child on the federal return. The mandatory nature of the instructional language is reinforced by 45 IAC 3.1-1-5(b)(4) which directs the taxpayer to "[s]ubtract $1000 for each exemption taken on the Federal return for taxpayer or spouse aged 65 or above..." and to subtract "$500 [now $1,500] for each exemption *taken on the Federal return* for a qualified dependent." (*Emphasis added*).

The instructions printed on the Indiana tax form, the accompanying instructional booklet, and the Department's regulation preclude an Indiana taxpayer from claiming an exemption unless the exemption has also been claimed on the corresponding federal return. The tax form, the instructional booklet, and accompanying regulation have interposed an additional requirement – not immediately apparent on the face of the statute – that the Indiana taxpayer claim the exemption on the federal return before claiming the exemption on the Indiana return.

The legislature has delegated to the Department the authority to interpret and apply the tax statutes. IC 6-8.1-3-3(a) states the "The department shall adopt, under IC 4-22-2, rules governing: (1) the administration, collection, and enforcement of the listed taxes; (2) the interpretation of the statutes governing the listed taxes; (3) the procedures relating to the listed taxes; and (4) the methods of valuing the items subject to the listed taxes."

There is nothing to indicate that the Department acted beyond its authority in promulgating a regulation mandating that Indiana taxpayers first claim the exemption on their federal returns before claiming the exemption on the corresponding Indiana return. Specifically, there is nothing to indicate that the Department acted beyond the scope of its authority in noting the discrepancy between taxpayer's federal and state 1999 returns and rendering an additional assessment based upon that discrepancy. "A rule issued by an agency pursuant to its statutory authority to implement the statute has the force of law." Johnson County Farm Bureau v. Dep't of Revenue, 568 N.E.2d 578, 584 (Ind. Tax Ct. 1991).

Taxpayer argues that the "spirit of the Indiana law allows exemptions where they are qualified and [does not] intend to deprive taxpayers of receiving an exemption but for the taxpayer's own decision to forego a qualifying exemption on their federal return." Taxpayer makes an argument – based on general principles of equity and fairness – that the Department circumvent the regulation and permit taxpayer to maximize the tax advantages attendant on his decision to claim three exemptions on his 1999 federal return. The Department has no such equitable authority and must decline taxpayer's request.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0120020489.LOF

LETTER OF FINDINGS NUMBER: 02-0489
Indiana Individual Income Tax
For the Tax Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Legislative Authority to Impose State Adjusted Gross Income Tax

Authority: Ind. Const. art. I, § 25; Ind. Const. art. IV, § 1; Ind. Const. art. X, § 8; IC 6-3-1-3.5; Ind. Dept. of Envtl. Management v. Chemical Waste Management, Inc., 643 N.E.2d 331 (Ind. 1994); Campbell v. Heiss, 53 N.E.2d 634 (Ind. 1944); Bissell Carpet Sweeper Co. v. Shane Co., 143 N.E.2d 415 (Ind. 1957)

Taxpayer argues that the state legislature acted outside its constitutional authority in imposing the individual state adjusted gross income by reference to the federal Internal Revenue Code.

II. Voluntary Nature of the State's Adjusted Gross Income Tax

Authority: IC 6-8.1-11-2; Couch v. United States, 409 U.S. 322 (1975); Helvering v. Mitchell, 303 U.S. 391 (1938); United States v. Gerads, 999 F.2d 1255 (9th Cir. 1993); McLaughlin v. United States, 832 F.2d 986 (7th Cir. 1987); McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985)

Taxpayer maintains that the payment of the state's individual adjusted gross income is voluntary. Therefore, taxpayer states that he no longer volunteers to pay the tax.

III. Imposition of the State's Adjusted Gross Income Tax on Wages

Authority: U.S. Const. amend. XIV; I.R.C. § 61; I.R.C. § 871; I.R.C. § 911; New York v. Graves, 300 U.S. 308 (1937); Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926); Irwin v. Gavit, 268 U.S. 161 (1925); United States v. Supplee-Biddle Hardware Co., 265 U.S. 189 (1924); Goodrich v. Edwards, 255 U.S. 527 (1921); Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509 (1921); Doyle v. Mitchell, 247 U.S. 179 (1918); Stratton's Independence, Ltd. V. Howbert, 231 U.S. 399 (1913); United States v. Connor, 898 F2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F2d 1328 (7th Cir. 1984); United States v. Ballard, 535 F.2d 400 (8th Cir. 1976); United States v. Romero, 640 F2d 1014 (9th Cir. 1981); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer states the federal adjusted gross income tax may only be levied against corporate profits. Because the state's individual income tax is based upon the federal scheme and because, by definition, taxpayer did not receive "corporate profits," taxpayer is not subject to the state's income tax. In addition, taxpayer maintains that, under I.R.C. § 861, only income from foreign sources or income received by nonresident aliens is subject to federal income tax.

STATEMENT OF FACTS

Taxpayer submitted Indiana income tax returns for the years 2000 and 2001. Those returns were filled in with "zeroes." The Department of Revenue (Department) disagreed with taxpayer's calculations, assessed an amount of unpaid taxes, and sent taxpayer notices to that effect. Taxpayer submitted a series of protests in which he disputed the Department's conclusions and demanded an opportunity to explain the basis for the protest. The Department, in a letter dated October 29, 2002, informed taxpayer that a protest of the 2000 assessment was untimely because it was submitted more than 60 days after the 2000 assessment was made; taxpayer does not challenge the Department's conclusion regarding that 2000 assessment. Nonetheless, taxpayer was given provided the opportunity to explain the basis of his protest of the 2001 assessment. This Letter of Findings results.

DISCUSSION

I. Legislative Authority to Impose State Adjusted Gross Income Tax

Taxpayer argues that, "Nowhere in the Indiana Constitution did the people of this state give any power to the federal government to make laws exclusively for those living in Indiana." In effect, taxpayer argues that the Indiana Constitution does not permit references to another taxing jurisdiction's own laws and when faced with such an improper reference – such as that found within IC 6-3-1-3.5 – the taxpayer's compliance is not required.

Specifically, taxpayer cites to Ind. Const. art. I, § 25 which states that, "No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution." This section of the state constitution is intended to place a limit on "the legislative activity of the General Assembly." Ind. Dept. of Envtl. Management v. Chemical Waste Management, Inc., 643 N.E.2d 331, 341 (Ind. 1994).

The Indiana Constitution vests all legislative authority in the Indiana General Assembly. "The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: 'Be it enacted by the General Assembly of the State of Indiana': and no law shall be enacted, except by bill." Ind. Const. art. IV, § 1. Taxpayer is correct in his assertion that, under Ind. Const. art. I, § 25 and art. IV, § 1, the Indiana General Assembly may not delegate either its authority or its responsibility for performing its exclusively legislative functions. "The power to legislate or to exercise a legislative function cannot be delegated to a non-governmental agency or person. Nor can the Legislature delegate its law-making power to a governmental officer, board, bureau or commission." Bissell Carpet Sweeper Co. v. Shane Co., 143 N.E.2d 415, 419 (Ind. 1957) (Internal citations omitted).

On its face, taxpayer's contention appears to have merit. The Indiana General Assembly may not delegate its responsibility for defining the state's adjusted gross income tax scheme to the federal government. Neither may the Assembly's authority to implement such a scheme be obtained under federal law. However, the cross-references to the Internal Revenue Code – such as I.R.C. § 62 cited within IC 6-3-1-3.5 – do not delegate the Assembly's taxing authority. The state legislature did not turn over its taxing authority to the federal government. The state legislature did not obtain its taxing authority from the federal government. Ind. Const. art. X, § 8 unambiguously states that, "The general assembly may levy and collect a tax upon income from whatever source derived...." The Indiana Code provisions reflect merely the legislature's independent decision to employ the federal calculation as the starting point for determining Indiana's adjusted gross income tax. "It is well settled that a legislative body may enact a law, the operation of which depends upon the existence of a stipulated condition." Campbell v. Heiss, 53 N.E.2d 634, 636 (Ind. 1944). The state legislature has retained its independent authority to define and enforce the state's own income tax plan. That the Indiana General Assembly has retained exclusive authority to stake out the parameters of the state's adjusted gross income tax scheme, is evidenced by the Assembly's decisions to periodically reenact IC 6-3-1-3.5 the latest of which occurred in 2001. Whether the General Assembly should have avoided internal references to the Internal Revenue Code by independently drafting original statutory

provisions mirroring the Internal Revenue Code and then require every Indiana taxpayer to recalculate his taxable income, is an issue beyond the scope of this Letter of Findings and irrelevant to determining taxpayer's tax liability. Suffice it to say that the General Assembly acted entirely within its authority in employing the federal adjusted gross income as the jumping off point for calculating the individual taxpayer's Indiana adjusted gross income.

FINDING

Taxpayer's protest is denied.

II. Voluntary Nature of the State's Adjusted Gross Income Tax

Taxpayer argues that payment of Indiana individual income tax is voluntary and that he no longer volunteers to pay the tax. Taxpayer cites to IC 6-8.1-11-2 which states as follows:

> The general assembly makes the following findings: (3) The Indiana tax system is based largely on *voluntary compliance*. (4) The development of understandable tax laws and the education of taxpayers concerning the tax laws will improve *voluntary compliance* and the relationship between the state and taxpayers. (*Emphasis added*).

Taxpayer's argument is without merit. In describing the nature of the federal tax system, the Court has stated that, "In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil." Helvering v. Mitchell, 303 U.S. 391, 399 (1938).

Taxpayer's basic contention – that Indiana depends on its citizens' voluntary compliance with the tax laws – is undeniable. Indeed, the state also depends on its licensed drivers to drive on the right side of the road. However, that does not mean that failure to comply with the law is without predictable consequences. "Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary." United States v. Gerads, 999 F.2d 1255, 1256 (9th Cir. 1993). "The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation, but despite [appellant's] protestation to the contrary, has been repeatedly rejected by the courts." McLaughlin v. United States, 832 F.2d 986, 987 (7th Cir. 1987). "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income', and maintaining that *payment of taxes is a purely voluntary function do not comport with common sense - let alone the law*." McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (Emphasis Added). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." Id. at *1.

The Supreme Court has stated that the government's entire tax systems is "largely dependent upon honest self-reporting." Couch v. United States, 409 U.S. 322, 335 (1975). Taxpayer's bare assertion, that, based on the precatory language contained within IC 6-8.1-11-2, he no longer "volunteers" to pay income taxes and that it is sufficient to fill in his tax returns with numerous "zeroes," does not fall within a reasonable definition of "honest self-reporting."

FINDING

Taxpayer's protest is denied.

III. Imposition of the State's Adjusted Gross Income Tax on Wages

Taxpayer sets out a number of arguments concerning the relevance and applicability of the income tax laws. Taxpayer maintains that the only corporate profits are subject to income tax. In addition, taxpayer maintains that only income received from foreign sources or income received by nonresident aliens is subject to federal income tax.

A. Corporate Profits

Taxpayer maintains that the Department erred when it decided that taxpayer owed income tax. According to taxpayer, only corporate profits are subject to income tax and that – as a private individual – he did not receive any compensation which was subject to the federal or state's income tax scheme.

In support of that proposition, taxpayer cites to a number of Supreme Court cases including Doyle v. Mitchell, 247 U.S. 179 (1918); Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509 (1921); and a federal circuit court case, United States v. Ballard, 535 F.2d 400 (8th Cir. 1976).

In Doyle, the Court stated that "Whatever difficulty there may be about a precise and scientific definition of 'income' it imports... the idea of gain or increase arising from corporate activities." Doyle at 185. In Smietanka, the Court stated that, "There can be no doubt that the word [income] must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the Act of 1913." Smietanka at 519. Similarly, the same Court stated, "there would seem to be no room to doubt that the word must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act and that what that meaning is has now become definitely settled by decisions of this court." Id. Taxpayer reads these and the cited companion cases as supporting the proposition that the federal income tax – and by extension Indiana's adjusted gross income tax – can only be levied against corporate gain. According to taxpayer, the cases inevitably lead to the conclusion that "income" – as referred to within both the federal and companion state statutes – is exclusively limited to that definition as established under the Civil War Income Tax Act of 1867; the Corporation Excise Tax Act of 1909; and the Income Tax Acts of 1913, 1916, and 1917.

However, the cited cases do not permit such a conclusion. In the cases cited by taxpayer, the Court was asked to determine the definition of corporate income. In Doyle, the Supreme Court was asked to resolve the issue of whether the increase in value of

the corporate taxpayer's standing timber constituted "income." In determining that the increase in value did not constitute corporate "income," the Court stated that the definition of corporate income had remained unchanged during the intervening recodifications of the federal corporate income tax and the ratification of the Sixteenth Amendment to the United States Constitution. In Smietanka – resolving the issue of whether a provision in a will, stipulating that accretions in the value of testamentary property should be considered additions to principal and not income – the court similarly noted that the definition of "income" had remained unchanged. The Court went on to state that. "In general, income is the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets...." Smietanka at 519.

The cited cases support the proposition that corporate gain is subject to the existing federal corporate income tax scheme. The cited cases are useful in determining whether income from the sale of mining stock is subject to corporate income tax, Goodrich v. Edwards, 255 U.S. 527 (1921), whether dividends paid on loans to German banks during World War I are subject to corporate income tax, Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926), whether life insurance proceeds paid to corporate beneficiaries are subject to corporate income tax, United States v. Supplee-Biddle Hardware Co., 265 U.S. 189 (1924), and whether income received from a will and designated for a granddaughter's education was subject to income tax. Irwin v. Gavit, 268 U.S. 161 (1925). The cited cases do nothing to support the assertion that *only* corporate gain is subject to the tax. Simply stated, if the courts are asked to define "corporate income," the courts will arrive at a conclusion which defines "corporate income."

In United States v. Ballard, 535 F.2d 400 (8th Cir. 1976), the court stated, in determining appellant taxpayer's individual income tax liability, that, "The general term "income" is not defined in the Internal Revenue Code." Id. at 404. Rather, the court noted that the Internal Revenue Code operates under and employs the term "gross income." Id. However, nothing in Ballard can be read to support the proposition that the federal adjusted gross income tax is only applicable to corporate gain or that individual taxpayer's wages are not subject to imposition of the federal adjusted gross income tax. To the contrary, the court found that appellant taxpayer was liable for additional income taxes on wages received from his business. Id. at 405.

The question of what constitutes individual taxable "income" has been answered by the courts. Although not binding upon Indiana's decision to tax the wages of its own citizens, the United States Supreme Court has definitively ruled on the question of whether a citizen's individual income may be subjected to an adjusted gross income tax. In New York v. Graves, 300 U.S. 308, 312-13 (1937), Justice Stone stated as follows:

> That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from the responsibility for sharing the costs of government.... A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits. The tax, which is apportioned to the ability of the taxpayer to pay it, is founded upon the protection afforded by the state to the recipient of the income in his person, in his right to receive the income and in his enjoyment of it when received. These are rights and privileges which attach to domicil within the state. To them and to the equitable distribution of the tax burden, the economic advantage realized by the receipt of income and represented by the power to control it, bears a direct relationship. *Neither the privilege nor the burden is affected by the character of the source from which the income is derived.* (*Emphasis added*).

Since that 1937 decision, the federal courts have consistently, repeatedly, and without exception determined that individual wages – no matter in what form the taxpayers have attempted to characterize, define, or label those wages – are income subject to taxation. United States v. Connor, 898 F2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable.") (Emphasis in original).

In addressing the identical question, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United Sates Supreme Court and federal circuit courts, and this Court's opinion... all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

B. Wages and Earnings of Private Citizens

Nevertheless, taxpayer maintains that even if he did receive taxable "income," because he is a private citizen and a resident this country, he is not subject to the tax. According to taxpayer, only income received from foreign sources or income received by nonresident aliens is subject to federal income tax.

Taxpayer maintains that I.R.C. § 61 does not include "wages" or "salaries." The cited federal code section reads as follows:

> Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Alimony and separate maintenance payments;
(9) Annuities;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust.

Thereafter, taxpayer cites to I.R.C. § 871, 911 which discuss the taxability of, inter alia, the "wages, and salaries" received by "Non-resident aliens and foreign corporations." Taxpayer reads I.R.C. §§ 61, 911, and 871 together and reaches the following conclusion: I.R.C. § 61, which defines "gross income" – from which "taxable income" for both federal and state purposes is calculated – does not include the terms "wages" or salaries." I.R.C. §§ 871, 911 – setting out the responsibility for non-resident aliens, Americans living abroad, and foreign corporations to pay income tax – *does* specifically refer to both "wages" and "salaries." Therefore, I.R.C. § 61, by not specifically referencing "wages" and "salaries," excludes the wages and salaries of the average American from income tax.

Taxpayer's conclusion – that "gross income" excludes "wages" or "salaries" – does not withstand close scrutiny. It is not uncommon for statutes to omit fundamental definitions of legal concepts or for tax statutes to omit fundamental definitions of what is being taxed. One will search the Indiana property tax statutes in vain for a definition of "land" but it is undisputed that Indiana jurisdictions levy a tax against real property. Although the Constitution does not define the words, there is no contention that "due process" is not a fundamental right guaranteed under the federal constitution and that a citizen's rights to "due process" is protected under U.S. Const. amend. XIV which states that no state shall "deprive any person of life, liberty, or property without due process of law; or deny any person within its jurisdiction the equal protection of the laws." Indeed, taxpayer himself stated that a denial of his right to a hearing and an opportunity to explain the basis for his protest would be a violation of the Due Process Clause of both the federal and state constitutions.

I.R.C. § 61 states that "gross income" includes "all income from whatever source derived." The citation itself specifically refers to "[c]ompensation for services." There is not a single court decision which has ever concluded that the average citizen's wages are not subject to either federal or state income tax. "Compensation for labor or services, paid in the form of wages or salary, has been universally, held by the courts of this republic to be income, subject to the income tax laws currently applicable." United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1986). "[T]he earnings of the human brain and hand when unaided by capital... are commonly dealt with as income in legislation." Stratton's Independence, Ltd. V. Howbert, 231 U.S. 399, 415 (1913).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120020515.LOF

LETTER OF FINDINGS NUMBER: 02-0515
Individual Adjusted Gross Income Tax
For the 1996 Tax Year

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Claim-of-Right Deduction – Indiana Adjusted Gross Income Tax

Authority: Ind. Const. art. 10, § 8; IC 6-3-1-3.5; I.R.C. § 62; I.R.C. § 1341; Reference Copies of Federal Tax Forms and Instructions (1996)

Taxpayer argues that the Department erred when it disallowed a deduction taken on his 1996 Indiana income tax return. The deduction consisted of an amount of money which taxpayer paid as restitution.

STATEMENT OF FACTS

Taxpayer embezzled sums of money from his former employer over a period of years prior to 1996. Taxpayer's theft of funds was detected, and taxpayer repaid the amount in July of 1996. Afterwards, taxpayer submitted amended state and federal tax returns in September of 1996 reflecting the amounts of money which had been embezzled during those years. To pay the additional taxes incurred as a result of the amended returns, taxpayer entered into an extended payment plan with the state.

Thereafter, taxpayer submitted his 1996 Indiana tax return. On that 1996 return, taxpayer claimed a deduction of approximately $240,000 representing the amount taxpayer repaid to the former employer. The amount deducted was listed on Indiana schedule one, line 18 as "repayment of income without claim of right." The Department disallowed the deduction and assessed an additional amount of taxes.

Taxpayer challenged the disallowance, an administrative hearing was held, and this Letter of Findings follows.

DISCUSSION

I. Claim-of-Right Deduction – Indiana Adjusted Gross Income Tax

Having been granted a claim-of-right deduction on his 1996 federal return, taxpayer argues that he is entitled to a similar deduction on his corresponding state return.

Taxpayer's deduction on his federal return was apparently based on I.R.C. § 1341. The federal rule provides in part:

If (1) an item was included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item;

(2) a deduction is allowable for the taxable year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item.

The Department does not challenge taxpayer's assertion that, in calculating his federal income tax, he was entitled to claim the repayment amount as a specific income adjustment under I.R.C. § 1341. Taxpayer – in filing his amended federal returns – reported the amounts embezzled during the years in which those amounts were received. Thereafter, on his 1996 federal return, taxpayer was entitled under I.R.C. 1341 to claim the amount repaid as a deduction because taxpayer did not have "an unrestricted right" to the embezzled funds.

Indiana levies an income tax under authority of Ind. Const. art. 10, § 8 which states that, "The general assembly may levy and collect a tax upon income from whatever source derived, at such rates, in such manner, *and with such exemptions as may be prescribed by law*." (*Emphasis added*).

In levying that tax, Indiana has largely adopted the federal definition of adjusted gross income. "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (1) In the case of all individuals, 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code)...." IC 6-3-1-3.5.

Thereafter, the Indiana statute lists a number of specific modifications to the federal adjusted gross income amount. None of the specific modifications – peculiar to the Indiana tax scheme – are relevant to taxpayer's claim that he is entitled to deduct the amount paid in restitution during 1996.

Because Indiana's definition of "adjusted gross income" borrows from the federal definition, a citation to the federal authority is helpful. In part, I.R.C. § 62 states that, "For purposes of this subtitle, the term 'adjusted gross income' means, in the case of an individual, gross income minus the following deductions...." Again, the subsequent federal provisions are irrelevant to taxpayer's argument.

The federal rules permit a taxpayer to claim a repayment of money included as income in an earlier year. The repayment amount is reported on line 27 of "Schedule A" which allows a "Deduction for repayment of amounts under a claim of right if over $3,000." Reference Copies of Federal Tax Forms and Instructions, p. 98 (1996). The total amount of "Itemized deductions from Schedule A" is then subtracted from the amount of federal adjusted gross income yielding federal "taxable income." What all of this means is that the "claim-of-right" adjustment is a "below the line" deduction computed after the taxpayer calculates the amount of federal adjusted gross income.

Taxpayer was entitled to the repayment deduction in determining his federal "taxable income," but that particular amount is immaterial in calculating the taxpayer's Indiana income tax. Under IC 6-3-1-3.5, federal adjusted gross income as defined in I.R.C. § 62 is the starting point for determining Indiana taxable income. The Indiana income tax act contains no provision authorizing the I.R.C. § 1341 "below the line" adjustment claimed on taxpayer's 1996 federal return. The "claim-of-right" adjustment is not used to arrive at federal adjusted gross income which – subject to specified adjustments – becomes Indiana taxable income.

Taxpayer argues that he is entitled to the deduction "[l]ogically and under a sense of fairness." The result may appear inequitable, but the Department has no authority to grant taxpayer's request.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220020552P.LOF

LETTER OF FINDINGS NUMBER: 02-0552P
Gross and Adjusted Gross Income Tax
For Calendar Year 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer filed its return with payment of $18,866 on October 15, 1999 and was assessed a late penalty. The original due date of the return was April 15, 1999.

Taxpayer filed a penalty protest dated July 10, 2002. Taxpayer states that it paid well over one hundred percent (100%) of the prior year's tax, which should release it from any penalties. Taxpayer enclosed a check for interest in the amount of $1,215.11.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it paid well over one hundred percent (100%) of the prior year's tax.

Taxpayer was assessed a penalty for the late payment of its taxes.

Taxpayer failed to remit its tax by the original due date of the return as required under IC 6-8.1-10-2.1(a)(2). The penalty is ten percent (10%) of the amount of tax not paid, if the person fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment.

Taxpayer made payment after the due date of the return and has not provided reasonable cause to allow the Department to waive the penalty.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220020576P.LOF

LETTER OF FINDINGS NUMBER: 02-0576P
Gross and Adjusted Gross Income Tax
For Calendar Year 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer filed a short year return for the period January 1, 1998 through July 23, 1998 on August 27, 1999.

Taxpayer filed a penalty protest dated June 21, 2002. Taxpayer states that a valid federal extension was obtained and a copy was appropriately submitted with the Indiana return for the period ending July 23, 1998. Taxpayer states that the return was timely filed and no late filing penalty is due the department.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed for the late payment of tax because it had a valid extension of time until October 15, 1999 to file the Indiana tax return.

IC 6-8.1-6-1 (c) states:
"If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax return are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90%) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax."
Taxpayer failed to remit its tax timely and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020597P.LOF

LETTER OF FINDINGS NUMBER: 02-0597P
Use Tax
For Calendar Years 1999, 2000, and 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar years 1999, 2000, and 2001. Upon audit it was discovered that the taxpayer failed to remit use tax on all of its taxable purchases and had no use tax accrual system in place.

Taxpayer requests abatement of the penalty because the local revenue office did not advise him when he started his construction business.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the Department did not advise him regarding use tax when he began his construction business.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Taxpayer failed to remit use tax due on one hundred (100%) of its clearly taxable items and had no use tax accrual system in place. Taxpayer filed yearly returns indicating no tax is due. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020598P.LOF

LETTER OF FINDINGS NUMBER: 02-0598P
Use Tax
For Calendar Years 1999, 2000, and 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar years 1999, 2000, and 2001. Upon audit it was discovered that the taxpayer failed to remit use tax on all of its taxable purchases and had no use tax accrual system in place.

Taxpayer requests abatement of the penalty because it maintained a reputation as a good corporate citizen in the State of Indiana. Other than the use tax owed on tractors and trailers purchased out of state, the remainder of the audit was minimal.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the assessment was minimal except for the tractors and trailers purchased out of state. It has maintained a good reputation in Indiana and requests an abatement of the penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to remit use tax due on one hundred (100%) of its clearly taxable items and had no use tax accrual system in place. Taxpayer filed monthly returns indicating no use tax was due. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2003-01 FIT
January 8, 2003

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The Publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Treatment of Conditional Sales/Finance Lease income for purposes of calculating the 80% test to determine if a corporation qualifies as a "Taxpayer" under the Financial Institutions Tax [IC 6-5.5].

Authority: IC 6-5.5; IC 6-5.5-1-17(d)(2); 45 IAC 17-2-4(e)(2)

The Taxpayer, a corporation which is a financial organization primarily engaged in Making loans through a variety financing arrangements worldwide.

STATEMENT OF FACTS

Taxpayer is a Delaware corporation headquartered outside of Indiana. Taxpayer is a Wholly-owned Subsidiary of "XYZ" [the Parent] also a Delaware corporation headquartered outside of Indiana. The parent and certain other subsidiaries are engaged in the manufacture and sale of heavy equipment, including construction and agriculture machinery, engines and related equipment. Taxpayer is a financial organization primarily engaged in making loans through a variety of financing arrangements. Taxpayer and its subsidiaries offer these financing arrangements to the independent dealers of Parent and its affiliates and the dealers' customers in acquiring Parent Equipment worldwide. Generally, these financing arrangements are initiated either by Taxpayer or, alternatively, by the dealer and subsequently acquired by Taxpayer.

Taxpayer may enter into a financing agreement directly with the customer after the dealer and customer have agreed on the purchase price and method of delivery of the Equipment. Under this scenario, Taxpayer may purchase the Equipment from the dealer and will have the dealer deliver Equipment to the customer. Under the terms of the financing agreement, Taxpayer pays the purchase price to the dealer, and the customer agrees to repay Taxpayer pursuant to the terms of the financing arrangement.

Alternatively, the dealer may issue the loan documents and assign the documents to Taxpayer. The dealer negotiates the terms of the financing arrangement, enters into a financing agreement with the customer, executes the agreement and completes both the sale and the financing. If the terms of the arrangement meet Taxpayer's requirements, Taxpayer may purchase the financing agreement.

Taxpayer engages in four primary retail financing arrangements which are:
(1) Sales by Dealer
(2) Conditional Sales/Finance Leases
(3) Installment Sales
(4) Long Term Operating Leases

Taxpayer's conditional sales/finance leases are treated as loans, not leases, for federal income tax purposes. Federal law requires Taxpayer to divide each rental payment into interest and principal. The interest component is reported as interest income on its Federal Form 1120 in the year the payment is received. Taxpayer reports 100% of the principal amount to be paid over the life of the lease on line (1a) of its Federal Form 1120 in the year the year the lease is executed. Taxpayer is in the business of financing the sale of Equipment, not selling such equipment at a profit. Accordingly, the principal payments under the finance lease equal the amount Taxpayer paid for the equipment and Taxpayer does not report any gross profit on finance leases.

The issue is how conditional sales/finance leases are treated for purposes of calculating the 80% test provided in IC 6-5.5-1-17(d) (2).

RULING

The Department rules that for purposes of determining Taxpayers requirement to report and pay tax under the Indiana Financial Institutions Tax [IC 6-5.5] it must derive at least 80% of its gross income from doing the "business of a financial institution". In the matter of conditional sales/financing leases IC 6-5.5-1-17(d) (2) (B) provides that

"Leasing or acting as an agent, broker, or advisor in connection with leasing real and personal property that is the economic equivalent of the extension of credit if the transaction is not treated as a lease for federal income tax purposes".

45 IAC 17-2-4(e) (2) provides:

"Leasing or acting as an agent, broker, or advisor, in connection with leasing real and personal property that is the economic equivalent of the extension of credit if the transaction is not treated as a lease for federal income tax purposes. If the lease is the economic equivalent of the extension of credit, and the lease is not treated as a lease for federal income tax purposes, the income derived from the lease is included in gross income for purposes of satisfying the eighty percent (80%) test whether the corporation is leasing its own real or personal property or is the lessor of real or personal property owned by another."

Thus the Taxpayer is required to include the gross income derived from conditional sales/financing leases in calculating the 80% test to determine the requirement to file and pay tax under the Indiana Financial Institutions Tax.

CAVEAT

This ruling is issued to the Taxpayer requesting it on the assumption that the Taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the Taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Cumulative Table of Nonrule Policy Documents

For Cumulative Tables of Nonrule Policy Documents printed in the Indiana Register in previous years, consult the following table:

1982	See 5 IR 2586	(December 1982)
1983	See 7 IR 252	(December 1983)
1984	See 8 IR 1220	(June 1985)
1985	See 9 IR 932	(January 1986)
1986	See 10 IR 173	(October 1986)
1987	See 11 IR 2786	(April 1988)
1988	See 12 IR 1023	(January 1989)
1989	See 13 IR 791	(January 1990)
1990	See 14 IR 956	(January 1991)
1991	See 15 IR 651	(January 1992)
1992	See 16 IR 1311	(January 1993)
1993	See 17 IR 897	(January 1994)
1994	See 18 IR 1166	(January 1995)
1995	See 19 IR 954	(January 1996)
1996	See 20 IR 1040	(January 1997)
1997	See 21 IR 1628	(January 1998)
1998	See 22 IR 1324	(January 1999)
1999	See 23 IR 1013	(January 2000)
2000	See 24 IR 1241	(January 2001)
2001	See 25 IR 1406	(January 2002)
2002	See 26 IR 1423	(January 2003)

Cumulative Tables of Executive Orders and Attorney General's Opinions

EXECUTIVE ORDERS

Number/Digest		Published
02-21	Amendment to settlements between the state of Indiana and the Unity Team and the state of Indiana and AFSCME Council 62	26 IR 1363
02-22	Postponement of the date of expiration of rules until one year after date specified in IC 4-22-2.5	26 IR 1746
03-1	Declaring an energy emergency in the state of Indiana due to the extremely cold weather and for the purpose of allowing the propane transport infrastructure to keep up with demand	26 IR 2138
03-2	Extending an energy emergency in the state of Indiana due to the extremely cold weather and for the purpose of allowing the propane transport infrastructure to keep up with demand	26 IR 2139

For Cumulative Tables of Executive Orders and Attorney General's Opinions printed in the Indiana Register in previous years, consult the following table:

1978	See 2 IR 181	(February 1979)
1979	See 3 IR 336	(March 1980)
1980	See 3 IR 2266	(December 1980)
1981	See 5 IR 179	(January 1982)
1982	See 5 IR 2588	(December 1982)
1983	See 7 IR 256	(December 1983)
1984	See 8 IR 249	(December 1984)
1985	See 9 IR 933	(January 1986)
1986	See 10 IR 175	(October 1986)
1987	See 11 IR 2790	(April 1988)
1988	See 12 IR 1025	(January 1989)
1989	See 13 IR 792	(January 1990)
1990	See 14 IR 957	(January 1991)
1991	See 15 IR 652	(January 1992)
1992	See 16 IR 1312	(January 1993)
1993	See 17 IR 898	(January 1994)
1994	See 18 IR 1167	(January 1995)
1995	See 19 IR 955	(January 1996)
1996	See 20 IR 1043	(January 1997)
1997	See 21 IR 1633	(January 1998)
1998	See 22 IR 1332	(January 1999)
1999	See 23 IR 1022	(January 2000)
2000	See 24 IR 1249	(January 2001)
2001	See 25 IR 1413	(January 2002)
2002	See 26 IR 1431	(January 2003)

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

11 IAC 1-1-3.5	N	02-238	26 IR 420	*AROC (26 IR 883)
				26 IR 2300
11 IAC 2-5-4				*ERR (26 IR 35)
11 IAC 2-5-5	N	02-324	26 IR 1598	*AROC (26 IR 2134)
11 IAC 2-6-1	A	02-110	25 IR 3213	**26 IR 6**
11 IAC 2-6-5	A	02-110	25 IR 3213	**26 IR 6**
11 IAC 2-6-6	N	02-110	25 IR 3213	**26 IR 6**

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

25 IAC 2-19	R	02-150	26 IR 86	
25 IAC 2-20	R	02-150	26 IR 86	
25 IAC 5	N	02-150	26 IR 67	

TITLE 31 STATE PERSONNEL DEPARTMENT

31 IAC 1-9-3	A	02-10	25 IR 3214	
31 IAC 1-9-4	A	02-10	25 IR 3215	
31 IAC 1-9-4.5	A	02-10	25 IR 3215	
31 IAC 1-12.1	R	02-10	25 IR 3219	
31 IAC 2-11-3	A	02-10	25 IR 3216	
31 IAC 2-11-4	A	02-10	25 IR 3217	
31 IAC 2-11-4.5	A	02-10	25 IR 3217	
31 IAC 2-17.1	R	02-10	25 IR 3219	
31 IAC 4	R	02-10	25 IR 3219	
31 IAC 5	N	02-10	25 IR 3218	

TITLE 35 BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND

35 IAC 8-1-1	A	02-163	25 IR 4134	
35 IAC 8-1-2	A	02-163	25 IR 4134	
35 IAC 8-2-1	A	02-163	25 IR 4135	
35 IAC 9-1-1	A	02-163	25 IR 4136	
35 IAC 9-1-2	A	02-163	25 IR 4136	
35 IAC 9-1-3	A	02-163	25 IR 4136	
35 IAC 9-1-4	A	02-163	25 IR 4136	
35 IAC 10	N	02-163	25 IR 4137	

TITLE 45 DEPARTMENT OF STATE REVENUE

45 IAC 3.1-1-99.1	N	02-305	26 IR 817	*ARR (26 IR 2376)
45 IAC 18-1-2	R	02-40	25 IR 3238	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2313
				*AROC (26 IR 2472)
45 IAC 18-1-3	R	02-40	25 IR 3238	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2313
				*AROC (26 IR 2472)
45 IAC 18-1-4	R	02-40	25 IR 3238	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2313
				*AROC (26 IR 2472)
45 IAC 18-1-5	R	02-40	25 IR 3238	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2313
				*AROC (26 IR 2472)
45 IAC 18-1-6	R	02-40	25 IR 3238	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2313
				*AROC (26 IR 2472)
45 IAC 18-1-7	R	02-40	25 IR 3238	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2313
				*AROC (26 IR 2472)
45 IAC 18-1-8	R	02-40	25 IR 3238	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2313
				*AROC (26 IR 2472)
45 IAC 18-1-9	N	02-40	25 IR 3220	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2300
				*AROC (26 IR 2472)
45 IAC 18-1-10	N	02-40	25 IR 3220	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2301
				*AROC (26 IR 2472)
45 IAC 18-1-11	N	02-40	25 IR 3220	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2301
				*AROC (26 IR 2472)
45 IAC 18-1-12	N	02-40	25 IR 3220	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2301
				*AROC (26 IR 2472)
45 IAC 18-1-13	N	02-40	25 IR 3220	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2301
				*AROC (26 IR 2472)
45 IAC 18-1-14	N	02-40	25 IR 3221	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2301
				*AROC (26 IR 2472)
45 IAC 18-1-15	N	02-40	25 IR 3221	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2301
				*AROC (26 IR 2472)
45 IAC 18-1-16	N	02-40	25 IR 3221	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2302
				*AROC (26 IR 2472)
45 IAC 18-1-17	N	02-40	25 IR 3221	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2302
				*AROC (26 IR 2472)
45 IAC 18-1-18	N	02-40	25 IR 3221	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2302
				*AROC (26 IR 2472)
45 IAC 18-1-19	N	02-40	25 IR 3221	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2302
				*AROC (26 IR 2472)
45 IAC 18-1-20	N	02-40	25 IR 3221	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2302
				*AROC (26 IR 2472)
45 IAC 18-1-21	N	02-40	25 IR 3222	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2302
				*AROC (26 IR 2472)
45 IAC 18-1-22	N	02-40	25 IR 3222	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2302
				*AROC (26 IR 2472)
45 IAC 18-1-23	N	02-40	25 IR 3222	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2303
				*AROC (26 IR 2472)
45 IAC 18-1-24	N	02-40	25 IR 3222	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2303
				*AROC (26 IR 2472)
45 IAC 18-1-25	N	02-40	25 IR 3222	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2303
				*AROC (26 IR 2472)
45 IAC 18-1-26	N	02-40	25 IR 3222	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2303
				*AROC (26 IR 2472)
45 IAC 18-1-27	N	02-40	25 IR 3222	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2303
				*AROC (26 IR 2472)

45 IAC 18-1-28	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2303** *AROC (26 IR 2472)
45 IAC 18-1-29	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2304** *AROC (26 IR 2472)
45 IAC 18-1-30	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2304** *AROC (26 IR 2472)
45 IAC 18-1-31	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2304** *AROC (26 IR 2472)
45 IAC 18-1-32	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2304** *AROC (26 IR 2472)
45 IAC 18-1-33	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-34	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-35	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-36	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-37	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-38	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-39	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-40	N	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-1-41	N	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-1-42	N	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-1-43	N	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-2-1	A	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-2-2	A	02-40	25 IR 3226	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-2-3	A	02-40	25 IR 3227	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-2-4	A	02-40	25 IR 3228	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-3-1	A	02-40	25 IR 3228	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-3-2	A	02-40	25 IR 3229	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-3-3	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-3-4	N	02-40	25 IR 3231	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2307** *AROC (26 IR 2472)
45 IAC 18-3-5	N	02-40	25 IR 3232	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2307** *AROC (26 IR 2472)
45 IAC 18-3-6	N	02-40	25 IR 3232	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2308** *AROC (26 IR 2472)
45 IAC 18-3-7	N	02-40	25 IR 3232	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2308** *AROC (26 IR 2472) *ERR (26 IR 2375)
45 IAC 18-3-8	N	02-40	25 IR 3233	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2308** *AROC (26 IR 2472)
45 IAC 18-4-1	A	02-40	25 IR 3233	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2309** *AROC (26 IR 2472)
45 IAC 18-4-2	A	02-40	25 IR 3234	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2309** *AROC (26 IR 2472)
45 IAC 18-5-2	A	02-40	25 IR 3235	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2310** *AROC (26 IR 2472)
45 IAC 18-6-1	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-6-2	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-6-3	A	02-40	25 IR 3235	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2310** *AROC (26 IR 2472)
45 IAC 18-7	N	02-40	25 IR 3236	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-8	N	02-40	25 IR 3236	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2311** *AROC (26 IR 2472)

Rules Affected by Volume 26

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

50 IAC 2.3-1-1	A	01-305	25 IR 835	**26 IR 6**
	A	01-402	26 IR 86	*AROC (26 IR 183)
				*AROC (26 IR 184)
				26 IR 2314
	A	02-240	26 IR 88	**26 IR 2315**
50 IAC 2.3-1-2	A	01-366	25 IR 1200	*ARR (25 IR 3760)
				*AWR (26 IR 39)
	A	01-402	26 IR 87	*AROC (26 IR 183)
				*AROC (26 IR 184)
				26 IR 2314
50 IAC 3.1-1	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-1	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-5	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-6	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-7	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-8	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-9	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.2	N	01-367	25 IR 2548	**26 IR 326**
				*ERR (26 IR 382)
50 IAC 12-16-30				*ERR (26 IR 793)
50 IAC 14				*ERR (26 IR 382)
50 IAC 15-1-1.5	N	01-266		††**26 IR 1516**
50 IAC 15-1-2.5	N	01-266	25 IR 410	*AROC (25 IR 2591)
				26 IR 1516
50 IAC 15-1-2.6	N	01-266	25 IR 410	*AROC (25 IR 2591)
				26 IR 1516
50 IAC 15-1-3	R	01-266	25 IR 416	*AROC (25 IR 2591)
				26 IR 1522
50 IAC 15-1-5	R	01-266	25 IR 416	*AROC (25 IR 2591)
				26 IR 1522
50 IAC 15-1-6	N	01-266	25 IR 410	*AROC (25 IR 2591)
50 IAC 15-3-1	A	01-266	25 IR 410	*AROC (25 IR 2591)
				26 IR 1516
50 IAC 15-3-2	A	01-266	25 IR 410	*AROC (25 IR 2591)
				26 IR 1516
50 IAC 15-3-3	A	01-266	25 IR 411	*AROC (25 IR 2591)
				26 IR 1517
50 IAC 15-3-4	A	01-266	25 IR 411	*AROC (25 IR 2591)
				26 IR 1517
50 IAC 15-3-5	A	01-266	25 IR 411	*AROC (25 IR 2591)
				26 IR 1517
50 IAC 15-3-6	N	01-266	25 IR 411	*AROC (25 IR 2591)
				26 IR 1518
50 IAC 15-4-1	A	01-266	25 IR 412	*AROC (25 IR 2591)
				26 IR 1518
50 IAC 15-5-1	A	01-266	25 IR 413	*AROC (25 IR 2591)
				26 IR 1519
50 IAC 15-5-2	A	01-266	25 IR 414	*AROC (25 IR 2591)
				26 IR 1520
50 IAC 15-5-4	A	01-266	25 IR 414	*AROC (25 IR 2591)
				26 IR 1520
50 IAC 15-5-5	A	01-266	25 IR 414	*AROC (25 IR 2591)
				26 IR 1520
50 IAC 15-5-6	A	01-266	25 IR 415	*AROC (25 IR 2591)
				26 IR 1521
50 IAC 15-5-7	A	01-266	25 IR 415	*AROC (25 IR 2591)
				26 IR 1521
50 IAC 15-5-8	A	01-266	25 IR 415	*AROC (25 IR 2591)
				26 IR 1521
50 IAC 17-5-1	A	00-188	24 IR 705	*AROC (24 IR 2590)
50 IAC 17-6-2	A	00-188	24 IR 705	*AROC (24 IR 2590)
50 IAC 17-7-1	A	00-188	24 IR 705	*AROC (24 IR 2590)
50 IAC 17-10.5	N	00-188	24 IR 706	*AROC (24 IR 2590)
50 IAC 18	N	02-81	26 IR 1117	*AROC (26 IR 1263)
50 IAC 19	N	02-342	26 IR 2397	

TITLE 52 INDIANA BOARD OF TAX REVIEW

52 IAC 1	N	02-206	26 IR 89	**26 IR 2316**

TITLE 60 OVERSIGHT COMMITTEE ON PUBLIC RECORDS

60 IAC 2-1-1	A	02-261	26 IR 1118
60 IAC 2-1-2	R	02-261	26 IR 1121
60 IAC 2-1-3	R	02-261	26 IR 1121
60 IAC 2-2-1	A	02-261	26 IR 1118
60 IAC 2-2-2	A	02-261	26 IR 1118
60 IAC 2-2-3	A	02-261	26 IR 1119
60 IAC 2-2-3.1	N	02-261	26 IR 1120
60 IAC 2-2-4	A	02-261	26 IR 1120
60 IAC 2-2-5	A	02-261	26 IR 1120
60 IAC 2-2-5.1	N	02-261	26 IR 1121
60 IAC 2-2-6	R	02-261	26 IR 1121
60 IAC 2-2-7	R	02-261	26 IR 1121

TITLE 65 STATE LOTTERY COMMISSION

65 IAC 3-3-3	A	02-252	*ER (26 IR 40)
65 IAC 3-3-10	A	02-252	*ER (26 IR 40)
65 IAC 3-4-4	A	02-252	*ER (26 IR 41)
65 IAC 3-4-5	A	02-252	*ER (26 IR 42)
65 IAC 4-2-4	A	02-253	*ER (26 IR 42)
65 IAC 4-2-8	A	02-253	*ER (26 IR 43)
65 IAC 4-452	N	02-353	*ER (26 IR 1585)
65 IAC 4-453	N	02-350	*ER (26 IR 1580)
65 IAC 5-2-4	A	02-253	*ER (26 IR 43)
65 IAC 5-2-8	A	02-253	*ER (26 IR 43)
65 IAC 5-12-2	A	02-254	*ER (26 IR 44)
65 IAC 5-12-3	A	02-254	*ER (26 IR 45)
65 IAC 5-12-4	A	02-254	*ER (26 IR 45)
65 IAC 5-12-5	A	02-254	*ER (26 IR 46)
65 IAC 5-12-6	A	02-254	*ER (26 IR 46)
65 IAC 5-12-7	A	02-254	*ER (26 IR 47)
65 IAC 5-12-9	A	02-254	*ER (26 IR 47)
65 IAC 5-12-10	A	02-254	*ER (26 IR 47)
65 IAC 5-12-11	A	02-254	*ER (26 IR 48)
65 IAC 5-12-12	A	02-254	*ER (26 IR 49)
65 IAC 5-12-12.5	A	02-254	*ER (26 IR 49)
65 IAC 5-12-14	A	02-254	*ER (26 IR 51)
65 IAC 5-15-10	N	03-14	*ER (26 IR 1946)
65 IAC 5-15-11	N	03-14	*ER (26 IR 1946)
65 IAC 6-1-1.1	N	02-255	*ER (26 IR 51)
65 IAC 6-1-1.2	N	02-255	*ER (26 IR 51)
65 IAC 6-1-2.1	N	02-255	*ER (26 IR 51)
65 IAC 6-1-2.2	N	02-255	*ER (26 IR 51)
65 IAC 6-1-4.1	N	02-255	*ER (26 IR 51)
65 IAC 6-1-10	N	02-255	*ER (26 IR 52)
65 IAC 6-2-3	A	02-255	*ER (26 IR 52)
65 IAC 6-2-4	A	02-255	*ER (26 IR 52)
65 IAC 6-2-5	A	02-255	*ER (26 IR 52)
65 IAC 6-2-8	A	02-255	*ER (26 IR 53)
65 IAC 6-2-9	A	02-255	*ER (26 IR 53)
65 IAC 6-3-2	A	02-255	*ER (26 IR 53)
65 IAC 6-3-3	R	02-255	*ER (26 IR 54)
65 IAC 6-4-6	R	02-255	*ER (26 IR 54)
65 IAC 6-4-7	R	02-255	*ER (26 IR 54)
65 IAC 6-4-8	R	02-255	*ER (26 IR 54)
65 IAC 6-4-9	R	02-255	*ER (26 IR 54)
65 IAC 6-4-10	R	02-255	*ER (26 IR 54)
65 IAC 6-4-11	R	02-255	*ER (26 IR 54)
65 IAC 6-4-12	R	02-255	*ER (26 IR 54)

TITLE 68 INDIANA GAMING COMMISSION

68 IAC 3	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 4	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
68 IAC 5	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 10	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 11	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261

68 IAC 12	RA	01-418	25 IR 2589	*CPH (25 IR 3208) **26 IR 1261**
68 IAC 13	RA	01-418	25 IR 2589	*CPH (25 IR 3208) **26 IR 1261**
68 IAC 14	RA	01-418	25 IR 2589	*CPH (25 IR 3208) **26 IR 1261**
68 IAC 15	RA	01-418	25 IR 2589	*CPH (25 IR 3208) **26 IR 1261**
68 IAC 16	RA	01-418	25 IR 2589	*CPH (25 IR 3208) **26 IR 1261**
68 IAC 17	RA	01-418	25 IR 2589	*CPH (25 IR 3208) **26 IR 1261**
68 IAC 18	RA	01-418	25 IR 2589	*CPH (25 IR 3208) **26 IR 1261**
68 IAC 19	RA	01-418	25 IR 2589	*CPH (25 IR 3208) **26 IR 1261**

TITLE 71 INDIANA HORSE RACING COMMISSION

71 IAC 1-1-41.5	N	02-282	*ER (26 IR 394)
71 IAC 1.5-1-37.5	N	02-282	*ER (26 IR 394) *ERR (26 IR 793)
71 IAC 3-2-9	A	03-52	*ER (26 IR 2380)
71 IAC 3.5-2-9	A	03-52	*ER (26 IR 2380)
71 IAC 4-2-4	A	03-52	*ER (26 IR 2380)
71 IAC 4-2-5	A	03-52	*ER (26 IR 2381)
71 IAC 4-3-1	A	03-52	*ER (26 IR 2381)
71 IAC 4.5-2-4	A	03-52	*ER (26 IR 2381)
71 IAC 4.5-2-5	A	03-52	*ER (26 IR 2382)
71 IAC 4.5-3-1	A	03-52	*ER (26 IR 2382)
71 IAC 5.5-4-4	A	03-52	*ER (26 IR 2382)
71 IAC 5.5-5-3	A	02-250	*ER (26 IR 55)
71 IAC 6.5-1-4	A	02-250	*ER (26 IR 55)
71 IAC 7-1-15	A	03-52	*ER (26 IR 2383)
71 IAC 7-1-28	A	03-52	*ER (26 IR 2383)
71 IAC 7-1-37	R	03-52	*ER (26 IR 2388)
71 IAC 7.5-1-4	A	03-52	*ER (26 IR 2383)
71 IAC 7.5-1-14	N	03-52	*ER (26 IR 2383)
71 IAC 7.5-6-1	A	03-52	*ER (26 IR 2384)
71 IAC 7.5-10	N	02-250	*ER (26 IR 56)
71 IAC 8-1-1	A	03-52	*ER (26 IR 2384)
71 IAC 8-4-1	A	03-52	*ER (26 IR 2385)
71 IAC 8-6-2	N	03-52	*ER (26 IR 2385)
71 IAC 8.5-1-1	A	03-52	*ER (26 IR 2385)
71 IAC 8.5-3-1	A	03-52	*ER (26 IR 2386)
71 IAC 8.5-4-8	N	02-250	*ER (26 IR 57)
71 IAC 8.5-5-2	N	02-250	*ER (26 IR 57)
	N	03-52	*ER (26 IR 2386)
71 IAC 8.5-10-6	A	02-250	*ER (26 IR 58)
71 IAC 10-2-9	A	03-52	*ER (26 IR 2387)
71 IAC 12-2-15	A	02-251	*ER (26 IR 58)
	A	02-282	*ER (26 IR 394)
	A	03-52	*ER (26 IR 2387)
71 IAC 12-2-18	A	03-52	*ER (26 IR 2388)
71 IAC 12-2-19	A	02-251	*ER (26 IR 59) *ERR (26 IR 382)
71 IAC 12-2-20	A	02-282	*ER (26 IR 395)
71 IAC 13.5-3-3	A	03-25	*ER (26 IR 1952)
71 IAC 14.5-1-3	A	03-25	*ER (26 IR 1952)

TITLE 80 STATE FAIR COMMISSION

80 IAC 4-3-3	A	02-200	26 IR 420
80 IAC 4-3-5	A	02-200	26 IR 420
80 IAC 4-4	N	02-243	26 IR 2398

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

105 IAC 9-1-1	A	03-17	26 IR 2400
105 IAC 9-1-2	A	03-17	26 IR 2400
105 IAC 9-2-1	A	02-231	26 IR 421

TITLE 135 INDIANA TRANSPORTATION FINANCE AUTHORITY

135 IAC 2	RA	02-175	25 IR 4219	**26 IR 882**
135 IAC 2-1-1	A	02-171	25 IR 4138	
135 IAC 2-2-1	A	02-171	25 IR 4140	
135 IAC 2-2-3	A	02-171	25 IR 4140	
135 IAC 2-2-5	A	02-171	25 IR 4140	
135 IAC 2-2-10	A	02-171	25 IR 4141	
135 IAC 2-2-12	A	02-171	25 IR 4141	
135 IAC 2-3-1	A	02-171	25 IR 4141	
135 IAC 2-3-2	A	02-171	25 IR 4141	
135 IAC 2-4-1	A	02-171	25 IR 4141	
135 IAC 2-4-4	A	02-171	25 IR 4142	
135 IAC 2-5-1	A	02-171	25 IR 4142	
135 IAC 2-5-2	A	02-171	25 IR 4142	
135 IAC 2-6-1	A	02-171	25 IR 4148	
135 IAC 2-7-1	A	02-171	25 IR 4148	
135 IAC 2-7-3	A	02-171	25 IR 4148	
135 IAC 2-7-7	A	02-171	25 IR 4148	
135 IAC 2-7-11	A	02-171	25 IR 4149	
135 IAC 2-7-15	A	02-171	25 IR 4149	
135 IAC 2-7-18	A	02-171	25 IR 4149	
135 IAC 2-7-19	R	02-171	25 IR 4151	
135 IAC 2-7-20	A	02-171	25 IR 4149	
135 IAC 2-7-23	A	02-171	25 IR 4149	
135 IAC 2-8-1	A	02-171	25 IR 4149	
135 IAC 2-8-3	A	02-171	25 IR 4150	
135 IAC 2-8-5	A	02-171	25 IR 4150	
135 IAC 2-8-7	A	02-171	25 IR 4150	
135 IAC 2-8-11	A	02-171	25 IR 4150	
135 IAC 2-10-1	A	02-171	25 IR 4151	
135 IAC 2-10-2	A	02-171	25 IR 4151	
135 IAC 3	RA	02-175	25 IR 4219	**26 IR 882**

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

170 IAC 4-1-26	A	02-44	25 IR 2751	**26 IR 328**
170 IAC 7-1.2				*ERR (26 IR 382)
170 IAC 7-1.3				*ERR (26 IR 382)
170 IAC 7-1.3-2				*ERR (26 IR 1565) *ERR (26 IR 2375)

TITLE 210 DEPARTMENT OF CORRECTION

210 IAC 1-6-1	A	02-259	26 IR 817	
210 IAC 1-6-2	A	02-259	26 IR 818	
210 IAC 1-6-3	R	02-259	26 IR 829	
210 IAC 1-6-4	A	02-259	26 IR 818	
210 IAC 1-6-5	A	02-259	26 IR 819	
210 IAC 1-6-6	A	02-259	26 IR 820	
210 IAC 1-6-7	A	02-259	26 IR 821	
210 IAC 1-10	N	02-259	26 IR 821	
210 IAC 5-1-1	A	02-259	26 IR 823	
210 IAC 5-1-2	A	02-259	26 IR 824	
210 IAC 5-1-3	A	02-259	26 IR 824	
210 IAC 5-1-4	A	02-259	26 IR 827	
210 IAC 6-1-1	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-2-1	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-2	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-3	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-2-4	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-2-5	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-2-6	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-7	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-8	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-9	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-10	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-11	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-12	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-13	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-3-1	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-3-2	A	02-173	25 IR 4153	**26 IR 1065**

210 IAC 6-3-3	A	02-173	25 IR 4153	**26 IR 1065**
210 IAC 6-3-4	A	02-173	25 IR 4154	**26 IR 1066**
210 IAC 6-3-5	A	02-173	25 IR 4155	**26 IR 1067**
210 IAC 6-3-6	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-3-7	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-3-8	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-3-9	A	02-173	25 IR 4155	**26 IR 1067**
210 IAC 6-3-10	A	02-173	25 IR 4155	**26 IR 1068**
210 IAC 6-3-11	A	02-173	25 IR 4155	**26 IR 1068**
210 IAC 6-3-12	RA	02-174	25 IR 4219	**26 IR 882**

TITLE 240 STATE POLICE DEPARTMENT

240 IAC 7-1-6	RA	02-139	25 IR 3882	**26 IR 546**

TITLE 250 LAW ENFORCEMENT TRAINING BOARD

250 IAC 1-1.1	RA	02-149	25 IR 3882	
250 IAC 1-2	RA	02-149	25 IR 3882	
250 IAC 1-3-1	RA	02-149	25 IR 3882	
250 IAC 1-3-3	RA	02-149	25 IR 3882	
250 IAC 1-3-6	RA	02-149	25 IR 3882	
250 IAC 1-3-7	RA	02-149	25 IR 3882	
250 IAC 1-3-8	RA	02-149	25 IR 3882	
250 IAC 1-3-9	RA	02-149	25 IR 3882	
250 IAC 1-3-10	RA	02-149	25 IR 3882	
250 IAC 1-3-11	RA	02-149	25 IR 3882	
250 IAC 1-3-12	RA	02-149	25 IR 3882	
250 IAC 1-3-13	RA	02-149	25 IR 3882	
250 IAC 1-5	RA	02-149	25 IR 3882	
250 IAC 1-5.l	RA	02-149	25 IR 3882	
250 IAC 1-5.2	RA	02-149	25 IR 3882	
250 IAC 1-5.3	RA	02-149	25 IR 3882	
250 IAC 1-5.4	RA	02-149	25 IR 3882	
250 IAC 1-5.5	RA	02-149	25 IR 3882	
250 IAC 1-6-1	RA	02-149	25 IR 3882	
250 IAC 1-6-2	RA	02-149	25 IR 3882	
250 IAC 1-6-3	RA	02-149	25 IR 3882	
250 IAC 1-6-4	RA	02-149	25 IR 3882	
250 IAC 1-6-5	RA	02-149	25 IR 3882	
250 IAC 1-6-6	RA	02-149	25 IR 3882	
250 IAC 1-7	RA	02-149	25 IR 3882	

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

305 IAC 1-2-6	A	02-328	26 IR 1598	
305 IAC 1-3-4	A	02-328	26 IR 1599	
305 IAC 1-4-1	A	02-328	26 IR 1599	
305 IAC 1-4-2	A	02-328	26 IR 1599	
305 IAC 1-5	N	02-328	26 IR 1600	

TITLE 312 NATURAL RESOURCES COMMISSION

312 IAC 2	RA	02-72	25 IR 3461	**26 IR 546**
312 IAC 2-4-1	A	02-236	26 IR 1126	
312 IAC 2-4-2	A	02-236	26 IR 1126	
312 IAC 2-4-4	A	02-236	26 IR 1127	
312 IAC 2-4-6	A	02-236	26 IR 1127	
312 IAC 2-4-7	A	02-236	26 IR 1127	
312 IAC 2-4-8	R	02-236	26 IR 1131	
312 IAC 2-4-9	A	02-236	26 IR 1128	
312 IAC 2-4-9.5	A	02-236	26 IR 1128	
312 IAC 2-4-10	R	02-236	26 IR 1131	
312 IAC 2-4-12	A	02-236	26 IR 1128	
312 IAC 2-4-13	N	02-236	26 IR 1129	
312 IAC 3	RA	02-72	25 IR 3461	**26 IR 546**
312 IAC 3-1-1	A	02-2	25 IR 2552	**26 IR 7**
312 IAC 3-1-2	A	02-2	25 IR 2553	**26 IR 8**
312 IAC 3-1-3	A	02-2	25 IR 2553	**26 IR 8**
312 IAC 3-1-8	A	02-2	25 IR 2553	**26 IR 8**
312 IAC 3-1-12	A	02-294	26 IR 1131	
312 IAC 3-1-14	A	02-2	25 IR 2554	**26 IR 9**
312 IAC 3-1-18	A	02-2	25 IR 2554	**26 IR 9**
312 IAC 5-2-47	A	03-24	26 IR 2401	
312 IAC 5-3-1	A	02-236	26 IR 1130	
312 IAC 5-3-2	A	02-236	26 IR 1130	
312 IAC 5-3-3	A	02-236	26 IR 1130	
312 IAC 5-6-6	A	02-162	25 IR 4165	**26 IR 1900**
312 IAC 5-13-2	A	03-24	26 IR 2401	
312 IAC 6	RA	02-331	26 IR 2133	
312 IAC 7	RA	02-331	26 IR 2133	
312 IAC 9	RA	02-331	26 IR 2133	
312 IAC 9-2-13	A	02-68	25 IR 2751	**26 IR 1068**
312 IAC 9-6-1	A	02-318	26 IR 1966	
312 IAC 9-6-7	A	02-318	26 IR 1967	
312 IAC 9-10-4	A	02-232	26 IR 1602	
312 IAC 9-10-6	A	02-68	25 IR 2752	**26 IR 1069**
312 IAC 9-10-11	A	01-444	25 IR 2551	**26 IR 692**
312 IAC 9-11-14	A	02-322	26 IR 1603	
312 IAC 12-3-2				*ERR (26 IR 1565)
312 IAC 14	RA	02-331	26 IR 2133	
312 IAC 15	RA	02-331	26 IR 2133	
312 IAC 16-3-2	A	02-73	25 IR 4156	**26 IR 1896**
312 IAC 16-3.5	N	02-73	25 IR 4158	**26 IR 1898**
312 IAC 16-4-1	A	02-73	25 IR 4158	**26 IR 1898**
312 IAC 16-4-2	A	02-73	25 IR 4159	**26 IR 1898**
312 IAC 16-4-5	A	02-73	25 IR 4159	**26 IR 1899**
312 IAC 18	RA	02-72	25 IR 3461	**26 IR 546**
312 IAC 18-3-8	A	02-202	26 IR 1123	
312 IAC 18-3-12	A	02-201	26 IR 1121	
312 IAC 22.5				*ERR (26 IR 383)
312 IAC 24	RA	02-331	26 IR 2133	
312 IAC 25-1-45.5	N	02-104	25 IR 4160	*AROC (26 IR 1736)
312 IAC 25-1-60.5	N	02-104	25 IR 4160	*AROC (26 IR 1736)
312 IAC 25-4-43	A	02-104	25 IR 4160	*AROC (26 IR 1736)
312 IAC 25-4-47	A	02-104	25 IR 4161	*AROC (26 IR 1736)
312 IAC 25-4-85	A	02-104	25 IR 4162	*AROC (26 IR 1736)
312 IAC 25-4-93	A	02-104	25 IR 4163	*AROC (26 IR 1736)
312 IAC 25-6-12.5	N	02-104	25 IR 4164	*AROC (26 IR 1736)
312 IAC 25-6-76.5	N	02-104	25 IR 4164	*AROC (26 IR 1736)

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326 IAC 1-1-3	A	02-337	26 IR 1997	
326 IAC 1-1-3.5	A	02-337	26 IR 1997	
326 IAC 1-2-65	A	02-337	26 IR 1997	
326 IAC 1-2-82.5	N	00-267	24 IR 3107	*CPH (25 IR 124)
326 IAC 1-2-90	A	02-337	26 IR 1998	
326 IAC 1-4-1	A	02-88	25 IR 3240	**26 IR 1077**
326 IAC 1-5-2				*ERR (26 IR 1565)
326 IAC 1-6-1	RA	00-44	24 IR 2752	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 1-6-2	RA	00-44	24 IR 2752	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 1-6-3	RA	00-44	24 IR 2753	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 1-6-4	RA	00-44	24 IR 2753	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 1-6-5	RA	00-44	24 IR 2753	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 1-6-6	RA	00-44	24 IR 2754	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 2-2-13				*ERR (26 IR 1565)
	A	02-337	26 IR 1998	
326 IAC 2-2-16				*ERR (26 IR 1565)
	A	02-337	26 IR 1999	
326 IAC 2-3-1				*ERR (26 IR 1565)
	A	02-337	26 IR 2000	
326 IAC 2-6-1	A	01-249	24 IR 3700	*CPH (24 IR 4012)
326 IAC 2-6-2	A	01-249	24 IR 3700	*CPH (24 IR 4012)
326 IAC 2-6-3	A	01-249	24 IR 3702	*CPH (24 IR 4012)
326 IAC 2-6-4	A	01-249	24 IR 3703	*CPH (24 IR 4012)
				*ERR (26 IR 1566)
	A	02-337	26 IR 2005	

326 IAC 2-6-5	N	01-249	24 IR 3705	*CPH (24 IR 4012)
326 IAC 2-7-3				*ERR (26 IR 1566)
	A	02-337	26 IR 2006	
326 IAC 2-7-8				*ERR (26 IR 1566)
	A	02-337	26 IR 2006	
326 IAC 2-7-18				*ERR (26 IR 1566)
	A	02-337	26 IR 2007	
326 IAC 2-8-3				*ERR (26 IR 1566)
	A	02-337	26 IR 2008	
326 IAC 2-9-7				*ERR (26 IR 1566)
	A	02-337	26 IR 2009	
326 IAC 2-9-8				*ERR (26 IR 1566)
	A	02-337	26 IR 2010	
326 IAC 2-9-9				*ERR (26 IR 1566)
	A	02-337	26 IR 2012	
326 IAC 2-9-10				*ERR (26 IR 1566)
	A	02-337	26 IR 2013	
326 IAC 2-9-13				*ERR (26 IR 1566)
	A	02-337	26 IR 2014	
326 IAC 3-4-1				*ERR (26 IR 1566)
	A	02-337	26 IR 2016	
326 IAC 3-4-3				*ERR (26 IR 1566)
	A	02-337	26 IR 2016	
326 IAC 3-5-2				*ERR (26 IR 1566)
	A	02-337	26 IR 2017	
326 IAC 3-5-3				*ERR (26 IR 1567)
	A	02-337	26 IR 2019	
326 IAC 3-5-4				*ERR (26 IR 1567)
	A	02-337	26 IR 2019	
326 IAC 3-5-5				*ERR (26 IR 1567)
	A	02-337	26 IR 2020	
326 IAC 3-6-1				*ERR (26 IR 1567)
	A	02-337	26 IR 2022	
326 IAC 3-6-3				*ERR (26 IR 1567)
	A	02-337	26 IR 2022	
326 IAC 3-6-5				*ERR (26 IR 1567)
	A	02-337	26 IR 2023	
326 IAC 3-7-2				*ERR (26 IR 1567)
	A	02-337	26 IR 2024	
326 IAC 3-7-4				*ERR (26 IR 1567)
	A	02-337	26 IR 2025	
326 IAC 4-1-4.1	A	02-88	25 IR 3240	**26 IR 1077**
326 IAC 4-1-8				*ERR (26 IR 1567)
326 IAC 4-2-1	A	00-44	24 IR 2754	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				26 IR 1071
326 IAC 4-2-2	A	00-44	24 IR 2754	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				26 IR 1071
326 IAC 5-1-2				*ERR (26 IR 1567)
	A	01-407	26 IR 2026	*CPH (26 IR 2391)
326 IAC 5-1-4				*ERR (26 IR 1567)
	A	02-337	26 IR 2026	
326 IAC 5-1-5				*ERR (26 IR 1567)
	A	02-337	26 IR 2027	
326 IAC 6-1-1				*ERR (26 IR 383)
326 IAC 6-1-10.1	A	01-407	26 IR 1970	*CPH (26 IR 2391)
326 IAC 6-1-10.2	A	01-407	26 IR 1994	*CPH (26 IR 2391)
326 IAC 6-1-14	A	02-122	26 IR 98	*CPH (26 IR 811)
				26 IR 2318
326 IAC 6-2-3				*ERR (26 IR 1567)
326 IAC 6-4-5				*ERR (26 IR 1567)
326 IAC 6-5-7				*ERR (26 IR 1568)
326 IAC 6-6-2				*ERR (26 IR 1568)
326 IAC 6-6-4				*ERR (26 IR 1568)
326 IAC 7-2-1				*ERR (26 IR 1565)
	A	02-337	26 IR 2028	
326 IAC 7-4-10				*ERR (26 IR 1568)
	A	02-337	26 IR 2029	
326 IAC 7-4-14				*ERR (26 IR 1568)
326 IAC 8-1-2	A	01-251	25 IR 2754	**26 IR 1073**
326 IAC 8-1-4				*ERR (26 IR 1565)
	A	02-337	26 IR 2030	
326 IAC 8-2-9	A	02-88	25 IR 3241	**26 IR 1078**
326 IAC 8-4-6	A	02-337	26 IR 2032	
326 IAC 8-4-9				*ERR (26 IR 1568)
	A	02-337	26 IR 2035	
326 IAC 8-7-1	RA	00-44	24 IR 2754	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-7-2	RA	00-44	24 IR 2755	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-7-3	RA	00-44	24 IR 2755	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-7-4	RA	00-44	24 IR 2756	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-7-5	RA	00-44	24 IR 2758	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-7-6	RA	00-44	24 IR 2758	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-7-7	RA	00-44	24 IR 2758	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
	A	02-337	26 IR 2036	
326 IAC 8-7-8	RA	00-44	24 IR 2758	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-7-9	RA	00-44	24 IR 2758	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-7-10	RA	00-44	24 IR 2759	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
326 IAC 8-8.1-1				*ERR (26 IR 1568)
326 IAC 8-9-1	RA	00-44	24 IR 2760	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-9-2	RA	00-44	24 IR 2760	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
	A	02-337	26 IR 2037	
326 IAC 8-9-3	RA	00-44	24 IR 2760	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
	A	02-337	26 IR 2037	
326 IAC 8-9-4	RA	00-44	24 IR 2761	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
	A	02-337	26 IR 2038	
326 IAC 8-9-5	RA	00-44	24 IR 2763	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
	A	02-337	26 IR 2040	
326 IAC 8-9-6	RA	00-44	24 IR 2765	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
	A	02-337	26 IR 2042	
326 IAC 8-10-5				*ERR (26 IR 1568)
326 IAC 8-10-6				*ERR (26 IR 1568)
326 IAC 8-10-7				*ERR (26 IR 1568)
	A	02-337	26 IR 2044	
326 IAC 8-11-1	RA	00-44	24 IR 2767	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-11-2	RA	00-44	24 IR 2767	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
	A	02-337	26 IR 2044	
326 IAC 8-11-3	RA	00-44	24 IR 2769	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
326 IAC 8-11-4	RA	00-44	24 IR 2770	*CPH (25 IR 2542)
				*CPH (25 IR 3208)

326 IAC 8-11-5	RA	00-44	24 IR 2771	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-11-6	RA	00-44	24 IR 2771	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1568)
	A	02-337	26 IR 2046	
326 IAC 8-11-7	RA	00-44	24 IR 2775	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1569)
	A	02-337	26 IR 2050	
326 IAC 8-11-8	RA	00-44	24 IR 2775	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-11-9	RA	00-44	24 IR 2776	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-11-10	RA	00-44	24 IR 2777	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 8-12-3				*ERR (26 IR 1569)
	A	02-337	26 IR 2050	
326 IAC 8-12-5				*ERR (26 IR 1569)
	A	02-337	26 IR 2052	
326 IAC 8-12-6				*ERR (26 IR 1565)
	A	02-337	26 IR 2053	
326 IAC 8-12-7	A	02-337	26 IR 2054	
326 IAC 8-13-5				*ERR (26 IR 1569)
	A	02-337	26 IR 2055	
326 IAC 9-1-1	A	00-44	24 IR 2777	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				26 IR 1072
326 IAC 9-1-2	A	00-44	24 IR 2777	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				26 IR 1072
326 IAC 10-1-2				*ERR (26 IR 1569)
	A	02-337	26 IR 2056	
326 IAC 10-1-4				*ERR (26 IR 1569)
	A	02-337	26 IR 2057	
326 IAC 10-1-5				*ERR (26 IR 1569)
	A	02-337	26 IR 2059	
326 IAC 10-1-6				*ERR (26 IR 1569)
	A	02-337	26 IR 2059	
326 IAC 10-3-1	A	02-54	26 IR 1134	*CPH (26 IR 2391)
326 IAC 10-3-3				*ERR (26 IR 1569)
326 IAC 10-4-1	A	02-54	26 IR 1134	*CPH (26 IR 2391)
326 IAC 10-4-2	A	02-54	26 IR 1136	*CPH (26 IR 2391)
326 IAC 10-4-3				*ERR (26 IR 1569)
326 IAC 10-4-4				*ERR (26 IR 1569)
326 IAC 10-4-8				*ERR (26 IR 1569)
326 IAC 10-4-9	A	02-54	26 IR 1142	*CPH (26 IR 2391)
326 IAC 10-4-10	A	02-54	26 IR 1148	*CPH (26 IR 2391)
326 IAC 10-4-12				*ERR (26 IR 1569)
326 IAC 10-4-13	A	02-54	26 IR 1152	*CPH (26 IR 2391)
326 IAC 10-4-14	A	02-54	26 IR 1155	*CPH (26 IR 2391)
326 IAC 10-4-15	A	02-54	26 IR 1156	*CPH (26 IR 2391)
326 IAC 11-3-4				*ERR (26 IR 1569)
	A	01-407	26 IR 2060	*CPH (26 IR 2391)
326 IAC 11-4-5	A	00-43	25 IR 2285	**26 IR 10**
326 IAC 11-5	R	99-177	25 IR 1984	**26 IR 10**
326 IAC 11-7-1	A	02-337	26 IR 2061	
326 IAC 13-1.1-1				*ERR (26 IR 1570)
	A	02-337	26 IR 2062	
326 IAC 13-1.1-8				*ERR (26 IR 1570)
	A	02-337	26 IR 2063	
326 IAC 13-1.1-10				*ERR (26 IR 1570)
	A	02-337	26 IR 2063	
326 IAC 13-1.1-13				*ERR (26 IR 1570)
	A	02-337	26 IR 2064	
326 IAC 13-1.1-14				*ERR (26 IR 1570)
	A	02-337	26 IR 2065	
326 IAC 13-1.1-16				*ERR (26 IR 1570)
	A	02-337	26 IR 2066	
326 IAC 13-2.1-3				*ERR (26 IR 1570)
326 IAC 13-3-1	A	02-88	25 IR 3242	**26 IR 1079**
326 IAC 13-3-2				*ERR (26 IR 1570)
326 IAC 13-3-5				*ERR (26 IR 1570)
326 IAC 13-3-6				*ERR (26 IR 1570)
326 IAC 14-1-1	A	02-337	26 IR 2066	
326 IAC 14-1-2	A	02-337	26 IR 2067	
326 IAC 14-1-4	R	02-337	26 IR 2099	
326 IAC 14-3-1				*ERR (26 IR 1570)
	A	02-337	26 IR 2067	
326 IAC 14-4-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2067	
326 IAC 14-5-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2068	
326 IAC 14-6-1				*ERR (26 IR 1571)
326 IAC 14-7-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2068	
326 IAC 14-8-1	A	02-337	26 IR 2068	
326 IAC 14-8-3	A	02-337	26 IR 2069	
326 IAC 14-8-4	A	02-337	26 IR 2069	
326 IAC 14-8-5	A	02-337	26 IR 2069	
326 IAC 14-9-5	A	02-337	26 IR 2070	
326 IAC 14-9-7				*ERR (26 IR 1571)
326 IAC 14-9-8	A	02-337	26 IR 2071	
326 IAC 14-9-9				*ERR (26 IR 1571)
	A	02-337	26 IR 2071	
326 IAC 14-10-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2072	
326 IAC 14-10-2				*ERR (26 IR 1571)
	A	02-337	26 IR 2074	
326 IAC 14-10-3				*ERR (26 IR 1571)
	A	02-337	26 IR 2076	
326 IAC 14-10-4				*ERR (26 IR 1571)
	A	02-337	26 IR 2078	
326 IAC 15-1-2				*ERR (26 IR 1565)
	A	02-337	26 IR 2080	
326 IAC 15-1-4				*ERR (26 IR 1571)
	A	02-337	26 IR 2083	
326 IAC 16-2-3				*ERR (26 IR 1571)
326 IAC 16-3-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2084	
326 IAC 18-1-2				*ERR (26 IR 1572)
	A	02-337	26 IR 2084	
326 IAC 18-1-5				*ERR (26 IR 1572)
	A	02-337	26 IR 2086	
326 IAC 18-1-7				*ERR (26 IR 1572)
	A	02-337	26 IR 2087	
326 IAC 18-1-8	A	02-337	26 IR 2088	
326 IAC 18-2-1	RA	00-44	24 IR 2778	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 18-2-2	RA	00-44	24 IR 2778	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1572)
	A	02-337	26 IR 2088	
326 IAC 18-2-3	RA	00-44	24 IR 2779	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				*ERR (26 IR 1572)
	A	02-337	26 IR 2090	
326 IAC 18-2-4	RA	00-44	24 IR 2786	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 18-2-5	RA	00-44	24 IR 2786	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 18-2-6	RA	00-44	24 IR 2787	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
	A	02-337	26 IR 2096	
326 IAC 18-2-7	RA	00-44	24 IR 2787	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
	A	02-337	26 IR 2097	
326 IAC 18-2-8	RA	00-44	24 IR 2789	*CPH (25 IR 2542)
				*CPH (25 IR 3208)

326 IAC 18-2-9	RA	00-44	24 IR 2789	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 18-2-10.1	RA	00-44	24 IR 2789	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 18-2-11	RA	00-44	24 IR 2790	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 18-2-12	RA	00-44	24 IR 2790	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 18-2-13	RA	00-44	24 IR 2790	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 18-2-14	RA	00-44	24 IR 2791	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
326 IAC 19-1	R	00-44	24 IR 2791	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
			26 IR 1073	
326 IAC 20-25-1	A	02-55	26 IR 92	*CPH (26 IR 811)
326 IAC 20-25-3	A	02-55	26 IR 92	*CPH (26 IR 811)
326 IAC 20-25-4	A	02-55	26 IR 94	*CPH (26 IR 811)
326 IAC 20-25-5	A	02-55	26 IR 94	*CPH (26 IR 811)
326 IAC 20-25-7	A	02-55	26 IR 95	*CPH (26 IR 811)
326 IAC 20-48	N	02-55	26 IR 95	*CPH (26 IR 811)
326 IAC 22-1-1				*ERR (26 IR 1572)
	A	02-337	26 IR 2098	
326 IAC 23-1-4	A	02-189	26 IR 2407	
326 IAC 23-1-5	A	02-189	26 IR 2408	
326 IAC 23-1-5.5	N	02-189	26 IR 2408	
326 IAC 23-1-6.5	N	02-189	26 IR 2408	
326 IAC 23-1-7.5	N	02-189	26 IR 2408	
326 IAC 23-1-7.6	N	02-189	26 IR 2408	
326 IAC 23-1-9	A	02-189	26 IR 2408	
326 IAC 23-1-10	A	02-189	26 IR 2409	
326 IAC 23-1-11	A	02-189	26 IR 2409	
326 IAC 23-1-11.5	N	02-189	26 IR 2409	
326 IAC 23-1-12.5	N	02-189	26 IR 2409	
326 IAC 23-1-17	A	02-189	26 IR 2409	
326 IAC 23-1-21	A	02-189	26 IR 2410	
326 IAC 23-1-21.5	N	02-189	26 IR 2410	
326 IAC 23-1-22	R	02-189	26 IR 2437	
326 IAC 23-1-23	R	02-189	26 IR 2437	
326 IAC 23-1-26.5	N	02-189	26 IR 2410	
326 IAC 23-1-27	A	02-189	26 IR 2410	
326 IAC 23-1-27.5	N	02-189	26 IR 2410	
326 IAC 23-1-31	A	02-337	26 IR 2099	
326 IAC 23-1-32.1	N	02-189	26 IR 2410	
326 IAC 23-1-32.2	N	02-189	26 IR 2411	
326 IAC 23-1-34	A	02-189	26 IR 2411	
326 IAC 23-1-34.5	N	02-189	26 IR 2411	
326 IAC 23-1-34.8	N	02-189	26 IR 2411	
326 IAC 23-1-37	R	02-189	26 IR 2437	
326 IAC 23-1-40	R	02-189	26 IR 2437	
326 IAC 23-1-42	R	02-189	26 IR 2437	
326 IAC 23-1-43	R	02-189	26 IR 2437	
326 IAC 23-1-44	R	02-189	26 IR 2437	
326 IAC 23-1-45	R	02-189	26 IR 2437	
326 IAC 23-1-46	R	02-189	26 IR 2437	
326 IAC 23-1-47	R	02-189	26 IR 2437	
326 IAC 23-1-48.5	N	02-189	26 IR 2411	
326 IAC 23-1-52	A	02-189	26 IR 2411	
326 IAC 23-1-52.5	N	02-189	26 IR 2411	
326 IAC 23-1-54.5	N	02-189	26 IR 2412	
326 IAC 23-1-55.5	N	02-189	26 IR 2412	
326 IAC 23-1-58.5	N	02-189	26 IR 2412	
326 IAC 23-1-58.7	N	02-189	26 IR 2412	
326 IAC 23-1-60.1	N	02-189	26 IR 2412	
326 IAC 23-1-60.5	N	02-189	26 IR 2412	
326 IAC 23-1-60.6	N	02-189	26 IR 2413	
326 IAC 23-1-61.5	N	02-189	26 IR 2413	
326 IAC 23-1-62.5	N	02-189	26 IR 2413	
326 IAC 23-1-62.6	N	02-189	26 IR 2413	
326 IAC 23-1-63	A	02-189	26 IR 2413	
326 IAC 23-1-64	A	02-189	26 IR 2414	
326 IAC 23-1-69.5	N	02-189	26 IR 2414	
326 IAC 23-1-69.6	N	02-189	26 IR 2414	
326 IAC 23-1-69.7	N	02-189	26 IR 2414	
326 IAC 23-1-71	N	02-189	26 IR 2414	
326 IAC 23-2-1	A	02-189	26 IR 2414	
326 IAC 23-2-3	A	02-189	26 IR 2415	
326 IAC 23-2-4	A	02-189	26 IR 2416	
326 IAC 23-2-5	A	02-189	26 IR 2418	
326 IAC 23-2-6	A	02-189	26 IR 2419	
326 IAC 23-2-6.5	N	02-189	26 IR 2419	
326 IAC 23-2-7	A	02-189	26 IR 2420	
326 IAC 23-2-8	A	02-189	26 IR 2421	
326 IAC 23-2-9	A	02-189	26 IR 2422	
326 IAC 23-3-1	A	02-189	26 IR 2422	
326 IAC 23-3-2	A	02-189	26 IR 2422	
326 IAC 23-3-3	A	02-189	26 IR 2423	
326 IAC 23-3-5	A	02-189	26 IR 2426	
326 IAC 23-3-7	A	02-189	26 IR 2426	
326 IAC 23-3-11	A	02-189	26 IR 2428	
326 IAC 23-3-12	A	02-189	26 IR 2428	
326 IAC 23-3-13	A	02-189	26 IR 2428	
326 IAC 23-4-1	A	02-189	26 IR 2429	
326 IAC 23-4-2	A	02-189	26 IR 2429	
326 IAC 23-4-3	A	02-189	26 IR 2429	
326 IAC 23-4-4	A	02-189	26 IR 2430	
326 IAC 23-4-5	A	02-189	26 IR 2431	
326 IAC 23-4-6	A	02-189	26 IR 2432	
326 IAC 23-4-7	A	02-189	26 IR 2434	
326 IAC 23-4-9	A	02-189	26 IR 2434	
326 IAC 23-4-11	A	02-189	26 IR 2435	
326 IAC 23-4-12	A	02-189	26 IR 2435	
326 IAC 23-4-13	A	02-189	26 IR 2435	
326 IAC 23-5	N	02-189	26 IR 2436	

TITLE 327 WATER POLLUTION CONTROL BOARD

327 IAC 5-2-9	A	00-136	26 IR 427	
327 IAC 5-2.1	N	00-136	26 IR 427	
327 IAC 5-4-6	A	01-96	26 IR 845	*CPH (26 IR 1113)
327 IAC 6.1-1-1	A	01-238	26 IR 1165	
327 IAC 6.1-1-3	A	01-238	26 IR 1166	
327 IAC 6.1-1-4	A	01-238	26 IR 1166	
327 IAC 6.1-1-5	A	01-238	26 IR 1167	
327 IAC 6.1-1-7	A	01-238	26 IR 1167	
327 IAC 6.1-2-3	A	01-238	26 IR 1167	
327 IAC 6.1-2-6	A	01-238	26 IR 1167	
327 IAC 6.1-2-7	A	01-238	26 IR 1167	
327 IAC 6.1-2-7.5	N	01-238	26 IR 1167	
327 IAC 6.1-2-8	A	01-238	26 IR 1168	
327 IAC 6.1-2-10	R	01-238	26 IR 1201	
327 IAC 6.1-2-12	R	01-238	26 IR 1201	
327 IAC 6.1-2-13	A	01-238	26 IR 1168	
327 IAC 6.1-2-14	A	01-238	26 IR 1168	
327 IAC 6.1-2-20.5	N	01-238	26 IR 1168	
327 IAC 6.1-2-28	A	01-238	26 IR 1169	
327 IAC 6.1-2-30	A	01-238	26 IR 1169	
327 IAC 6.1-2-31.5	N	01-238	26 IR 1169	
327 IAC 6.1-2-35	A	01-238	26 IR 1169	
327 IAC 6.1-2-42	A	01-238	26 IR 1169	
327 IAC 6.1-2-43	A	01-238	26 IR 1170	
327 IAC 6.1-2-54	A	01-238	26 IR 1170	
327 IAC 6.1-2-55	A	01-238	26 IR 1170	
327 IAC 6.1-2-55.5	N	01-238	26 IR 1170	
327 IAC 6.1-2-61	R	01-238	26 IR 1201	
327 IAC 6.1-3-1	A	01-238	26 IR 1170	
327 IAC 6.1-3-2	A	01-238	26 IR 1171	
327 IAC 6.1-3-3	A	01-238	26 IR 1172	
327 IAC 6.1-3-4	A	01-238	26 IR 1172	

327 IAC 6.1-3-7	A	01-238	26 IR 1172	
327 IAC 6.1-3-8	N	01-238	26 IR 1173	
327 IAC 6.1-4-1	A	01-238	26 IR 1173	
327 IAC 6.1-4-3	A	01-238	26 IR 1173	
327 IAC 6.1-4-4	A	01-238	26 IR 1174	
327 IAC 6.1-4-5	A	01-238	26 IR 1175	
327 IAC 6.1-4-5.5	N	01-238	26 IR 1175	
327 IAC 6.1-4-6	A	01-238	26 IR 1176	
327 IAC 6.1-4-7	A	01-238	26 IR 1177	
327 IAC 6.1-4-8	A	01-238	26 IR 1178	
327 IAC 6.1-4-9	A	01-238	26 IR 1179	
327 IAC 6.1-4-10	A	01-238	26 IR 1181	
327 IAC 6.1-4-11	A	01-238	26 IR 1182	
327 IAC 6.1-4-13	A	01-238	26 IR 1182	
327 IAC 6.1-4-16	A	01-238	26 IR 1184	
327 IAC 6.1-4-17	A	01-238	26 IR 1186	
327 IAC 6.1-4-18	A	01-238	26 IR 1187	
327 IAC 6.1-4-19	A	01-238	26 IR 1187	
327 IAC 6.1-5-1	A	01-238	26 IR 1187	
327 IAC 6.1-5-2	A	01-238	26 IR 1187	
327 IAC 6.1-5-3	A	01-238	26 IR 1188	
327 IAC 6.1-5-4	A	01-238	26 IR 1188	
327 IAC 6.1-6-1	A	01-238	26 IR 1189	
327 IAC 6.1-6-2	A	01-238	26 IR 1189	
327 IAC 6.1-6-3	A	01-238	26 IR 1190	
327 IAC 6.1-7-1	A	01-238	26 IR 1191	
327 IAC 6.1-7-2	A	01-238	26 IR 1191	
327 IAC 6.1-7-3	A	01-238	26 IR 1192	
327 IAC 6.1-7-4	A	01-238	26 IR 1193	
327 IAC 6.1-7-5	A	01-238	26 IR 1193	
327 IAC 6.1-7-6	A	01-238	26 IR 1194	
327 IAC 6.1-7-9	A	01-238	26 IR 1195	
327 IAC 6.1-7-10	A	01-238	26 IR 1195	
327 IAC 6.1-7-11	A	01-238	26 IR 1196	
327 IAC 6.1-7.5	N	01-238	26 IR 1197	
327 IAC 6.1-8-1	A	01-238	26 IR 1198	
327 IAC 6.1-8-2	A	01-238	26 IR 1199	
327 IAC 6.1-8-3	A	01-238	26 IR 1199	
327 IAC 6.1-8-4	A	01-238	26 IR 1199	
327 IAC 6.1-8-5	A	01-238	26 IR 1200	
327 IAC 6.1-8-6	A	01-238	26 IR 1200	
327 IAC 6.1-8-7	A	01-238	26 IR 1200	
327 IAC 6.1-8-8	A	01-238	26 IR 1201	
327 IAC 8-2-1	A	01-348	26 IR 101	*CPH (26 IR 812)
327 IAC 8-2-5	A	01-348	26 IR 105	*CPH (26 IR 812)
327 IAC 8-2-5.3	A	01-348	26 IR 107	*CPH (26 IR 812)
327 IAC 8-2-6	R	01-348	26 IR 152	*CPH (26 IR 812)
327 IAC 8-2-8.5	A	01-348	26 IR 109	*CPH (26 IR 812)
327 IAC 8-2-13	A	01-348	26 IR 110	*CPH (26 IR 812)
327 IAC 8-2-29	R	01-348	26 IR 152	*CPH (26 IR 812)
327 IAC 8-2-30	A	01-348	26 IR 110	*CPH (26 IR 812)
327 IAC 8-2-31	A	01-348	26 IR 111	*CPH (26 IR 812)
327 IAC 8-2-48	N	01-348	26 IR 111	*CPH (26 IR 812)
327 IAC 8-2.1-3	A	01-348	26 IR 112	*CPH (26 IR 812)
327 IAC 8-2.1-4	A	01-348	26 IR 114	*CPH (26 IR 812)
327 IAC 8-2.1-6	A	01-348	26 IR 115	*CPH (26 IR 812)
327 IAC 8-2.1-8	A	01-348	26 IR 121	*CPH (26 IR 812)
327 IAC 8-2.1-16	A	01-348	26 IR 122	*CPH (26 IR 812)
327 IAC 8-2.1-17	A	01-348	26 IR 126	*CPH (26 IR 812)
327 IAC 8-2.5	N	01-348	26 IR 133	*CPH (26 IR 812)
327 IAC 8-2.6	N	01-348	26 IR 146	*CPH (26 IR 812)
327 IAC 15-2-3	A	01-95	26 IR 1615	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-2-6	A	01-95	26 IR 1615	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-2-8	A	01-95	26 IR 1615	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-2-9	A	01-95	26 IR 1615	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-3-1	A	01-95	26 IR 1616	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-3-2	A	01-95	26 IR 1616	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-3-3	A	01-95	26 IR 1617	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-1	A	01-95	26 IR 1617	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-2	A	01-95	26 IR 1617	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-3	A	01-95	26 IR 1618	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-4	A	01-95	26 IR 1619	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-5	A	01-95	26 IR 1620	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-6	A	01-95	26 IR 1621	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-6.5	N	01-95	26 IR 1622	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-7	A	01-95	26 IR 1625	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-7.5	N	01-95	26 IR 1627	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-8	A	01-95	26 IR 1628	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-10	A	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-11	R	01-95	26 IR 1646	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-5-12	N	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-1	A	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-2	A	01-95	26 IR 1629	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-4	A	01-95	26 IR 1632	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-5	A	01-95	26 IR 1635	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-6	A	01-95	26 IR 1635	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-7	A	01-95	26 IR 1635	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-7.3	N	01-95	26 IR 1641	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-7.5	N	01-95	26 IR 1643	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-8.5	N	01-95	26 IR 1643	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-10	N	01-95	26 IR 1643	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-11	N	01-95	26 IR 1643	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-6-12	N	01-95	26 IR 1644	*CPH (26 IR 1961) *CPH (26 IR 2392)
327 IAC 15-13	N	01-96	26 IR 847	*CPH (26 IR 1113)

TITLE 329 SOLID WASTE MANAGEMENT BOARD

329 IAC 3.1-1-7	A	02-235	26 IR 1240	*CPH (26 IR 1962)
329 IAC 3.1-4-1	A	02-235	26 IR 1240	*CPH (26 IR 1962)
329 IAC 3.1-7-2	A	02-235	26 IR 1240	*CPH (26 IR 1962)
329 IAC 3.1-9-2	A	02-235	26 IR 1241	*CPH (26 IR 1962)
329 IAC 3.1-10-2	A	02-235	26 IR 1242	*CPH (26 IR 1962)
329 IAC 9-1-1	A	01-161	26 IR 1209	*CPH (26 IR 1962)
329 IAC 9-1-4	A	01-161	26 IR 1209	*CPH (26 IR 1962)
329 IAC 9-1-10.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-1-10.2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-1-10.4	N	01-161	26 IR 1209	*CPH (26 IR 1962)

329 IAC 9-1-10.6	N	01-161	26 IR 1209	*CPH (26 IR 1962)
329 IAC 9-1-10.8	N	01-161	26 IR 1210	*CPH (26 IR 1962)
329 IAC 9-1-14	A	01-161	26 IR 1210	*CPH (26 IR 1962)
329 IAC 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-1-14.3	N	01-161	26 IR 1210	*CPH (26 IR 1962)
329 IAC 9-1-14.5	N	01-161	26 IR 1210	*CPH (26 IR 1962)
329 IAC 9-1-14.7	N	01-161	26 IR 1210	*CPH (26 IR 1962)
329 IAC 9-1-25	A	01-161	26 IR 1210	*CPH (26 IR 1962)
329 IAC 9-1-27	A	01-161	26 IR 1210	*CPH (26 IR 1962)
329 IAC 9-1-29.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-1-36	A	01-161	26 IR 1210	*CPH (26 IR 1962)
329 IAC 9-1-39.5	N	01-161	26 IR 1211	*CPH (26 IR 1962)
329 IAC 9-1-41	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-1-41.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-1-41.5	N	01-161	26 IR 1211	*CPH (26 IR 1962)
329 IAC 9-1-42.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-1-47	A	01-161	26 IR 1211	*CPH (26 IR 1962)
329 IAC 9-1-47.1	A	01-161	26 IR 1211	*CPH (26 IR 1962)
329 IAC 9-2-1	A	01-161	26 IR 1211	*CPH (26 IR 1962)
329 IAC 9-2-2	A	01-161	26 IR 1214	*CPH (26 IR 1962)
329 IAC 9-2.1-1	A	01-161	26 IR 1215	*CPH (26 IR 1962)
329 IAC 9-3-1	A	01-161	26 IR 1216	*CPH (26 IR 1962)
329 IAC 9-3-2	N	01-161	26 IR 1218	*CPH (26 IR 1962)
329 IAC 9-3.1-1	A	01-161	26 IR 1218	*CPH (26 IR 1962)
329 IAC 9-3.1-2	A	01-161	26 IR 1219	*CPH (26 IR 1962)
329 IAC 9-3.1-3	A	01-161	26 IR 1219	*CPH (26 IR 1962)
329 IAC 9-3.1-4	A	01-161	26 IR 1219	*CPH (26 IR 1962)
329 IAC 9-4-3	A	01-161	26 IR 1220	*CPH (26 IR 1962)
329 IAC 9-4-4	A	01-161	26 IR 1221	*CPH (26 IR 1962)
329 IAC 9-5-1	A	01-161	26 IR 1221	*CPH (26 IR 1962)
329 IAC 9-5-2	A	01-161	26 IR 1223	*CPH (26 IR 1962)
329 IAC 9-5-3.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-5-3.2	N	01-161	26 IR 1223	*CPH (26 IR 1962)
329 IAC 9-5-4.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-5-4.2	N	01-161	26 IR 1224	*CPH (26 IR 1962)
329 IAC 9-5-5.1	A	01-161	26 IR 1224	*CPH (26 IR 1962)
329 IAC 9-5-6	A	01-161	26 IR 1226	*CPH (26 IR 1962)
329 IAC 9-5-7	A	01-161	26 IR 1227	*CPH (26 IR 1962)
329 IAC 9-6-1	A	01-161	26 IR 1229	*CPH (26 IR 1962)
329 IAC 9-6-2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 9-6-2.5	N	01-161	26 IR 1230	*CPH (26 IR 1962)
329 IAC 9-6-3	A	01-161	26 IR 1234	*CPH (26 IR 1962)
329 IAC 9-6-4	A	01-161	26 IR 1234	*CPH (26 IR 1962)
329 IAC 9-6-5	A	01-161	26 IR 1235	*CPH (26 IR 1962)
329 IAC 9-7-1	A	01-161	26 IR 1235	*CPH (26 IR 1962)
329 IAC 9-7-2	A	01-161	26 IR 1236	*CPH (26 IR 1962)
329 IAC 9-7-4	A	01-161	26 IR 1237	*CPH (26 IR 1962)
329 IAC 9-7-6	R	01-161	26 IR 1239	*CPH (26 IR 1962)
329 IAC 10-1-4	A	00-185	26 IR 432	*CPH (26 IR 2392)
329 IAC 10-1-4.5	N	00-185	26 IR 433	*CPH (26 IR 2392)
329 IAC 10-2-6	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-11	A	00-185	26 IR 433	*CPH (26 IR 2392)
329 IAC 10-2-29	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-29.5	N	01-288	26 IR 1653	
329 IAC 10-2-32	A	01-288	26 IR 1653	
329 IAC 10-2-33	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-41	A	00-185	26 IR 433	*CPH (26 IR 2392)
329 IAC 10-2-41.1	A	00-185	26 IR 434	*CPH (26 IR 2392)
329 IAC 10-2-53	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-60	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-63.5	N	00-185	26 IR 434	*CPH (26 IR 2392)
329 IAC 10-2-64	A	00-185	26 IR 434	*CPH (26 IR 2392)
329 IAC 10-2-66.1	N	00-185	26 IR 434	*CPH (26 IR 2392)
329 IAC 10-2-66.2	N	00-185	26 IR 434	*CPH (26 IR 2392)
329 IAC 10-2-66.3	N	00-185	26 IR 434	*CPH (26 IR 2392)
329 IAC 10-2-69	A	00-185	26 IR 435	*CPH (26 IR 2392)
329 IAC 10-2-72.1	A	01-288	26 IR 1654	
329 IAC 10-2-74	A	00-185	26 IR 435	*CPH (26 IR 2392)
329 IAC 10-2-75	A	00-185	26 IR 435	*CPH (26 IR 2392)
329 IAC 10-2-75.1	N	00-185	26 IR 435	*CPH (26 IR 2392)
329 IAC 10-2-76	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-96	A	00-185	26 IR 435	*CPH (26 IR 2392)
329 IAC 10-2-97.1	A	00-185	26 IR 435	*CPH (26 IR 2392)
329 IAC 10-2-99	A	00-185	26 IR 436	*CPH (26 IR 2392)
329 IAC 10-2-100	A	00-185	26 IR 436	*CPH (26 IR 2392)
329 IAC 10-2-105.3	N	00-185	26 IR 436	*CPH (26 IR 2392)
329 IAC 10-2-106	A	00-185	26 IR 436	*CPH (26 IR 2392)
329 IAC 10-2-109	A	00-185	26 IR 436	*CPH (26 IR 2392)
329 IAC 10-2-111.5	N	00-185	26 IR 436	*CPH (26 IR 2392)
329 IAC 10-2-112	A	00-185	26 IR 436	*CPH (26 IR 2392)
329 IAC 10-2-115	A	01-288	26 IR 1654	
329 IAC 10-2-116	A	01-288	26 IR 1654	
329 IAC 10-2-117	A	01-288	26 IR 1654	
329 IAC 10-2-121.1	A	00-185	26 IR 437	*CPH (26 IR 2392)
329 IAC 10-2-127	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-128	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-130	A	01-288	26 IR 1655	
329 IAC 10-2-132.2	N	00-185	26 IR 437	*CPH (26 IR 2392)
329 IAC 10-2-132.3	N	00-185	26 IR 437	*CPH (26 IR 2392)
329 IAC 10-2-135.1	R	01-288	26 IR 1674	
329 IAC 10-2-135.5	N	01-288	26 IR 1655	
329 IAC 10-2-142.5	N	00-185	26 IR 437	*CPH (26 IR 2392)
329 IAC 10-2-147.2	N	00-185	26 IR 437	*CPH (26 IR 2392)
329 IAC 10-2-149	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-158	A	00-185	26 IR 437	*CPH (26 IR 2392)
329 IAC 10-2-165.5	N	00-185	26 IR 438	*CPH (26 IR 2392)
329 IAC 10-2-172.5	N	00-185	26 IR 438	*CPH (26 IR 2392)
329 IAC 10-2-174	A	01-288	26 IR 1655	
329 IAC 10-2-177	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-179	R	01-288	26 IR 1674	
329 IAC 10-2-181.2	N	00-185	26 IR 438	*CPH (26 IR 2392)
329 IAC 10-2-181.5	N	00-185	26 IR 438	*CPH (26 IR 2392)
329 IAC 10-2-181.6	N	00-185	26 IR 438	*CPH (26 IR 2392)
329 IAC 10-2-187.5	N	00-185	26 IR 438	*CPH (26 IR 2392)
329 IAC 10-2-197.1	A	01-288	26 IR 1656	
329 IAC 10-2-199.1	R	01-288	26 IR 1674	
329 IAC 10-2-201.1	R	01-288	26 IR 1674	
329 IAC 10-2-203	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-2-205	R	00-185	26 IR 511	*CPH (26 IR 2392)
329 IAC 10-3-1	A	00-185	26 IR 438	*CPH (26 IR 2392)
329 IAC 10-3-2	A	00-185	26 IR 439	*CPH (26 IR 2392)
329 IAC 10-3-3	A	00-185	26 IR 439	*CPH (26 IR 2392)
329 IAC 10-5-1	A	01-288	26 IR 1656	
329 IAC 10-6-4	A	00-185	26 IR 440	*CPH (26 IR 2392)
329 IAC 10-7.1	R	01-288	26 IR 1674	
329 IAC 10-7.2	N	01-288	26 IR 1656	
329 IAC 10-8.1	R	01-288	26 IR 1674	
329 IAC 10-8.2	N	01-288	26 IR 1657	
329 IAC 10-9-2	A	01-288	26 IR 1659	
329 IAC 10-9-4	A	01-288	26 IR 1659	
329 IAC 10-10-1	A	00-185	26 IR 440	*CPH (26 IR 2392)
329 IAC 10-10-2	A	00-185	26 IR 440	*CPH (26 IR 2392)
329 IAC 10-11-2.1	A	00-185	26 IR 440	*CPH (26 IR 2392)
329 IAC 10-11-2.5	A	00-185	26 IR 441	*CPH (26 IR 2392)
329 IAC 10-11-5.1	A	00-185	26 IR 443	*CPH (26 IR 2392)
329 IAC 10-11-6	A	00-185	26 IR 443	*CPH (26 IR 2392)
329 IAC 10-12-1	A	00-185	26 IR 443	*CPH (26 IR 2392)
329 IAC 10-13-1	A	00-185	26 IR 445	*CPH (26 IR 2392)
329 IAC 10-13-5	A	00-185	26 IR 445	*CPH (26 IR 2392)
329 IAC 10-13-6	A	00-185	26 IR 446	*CPH (26 IR 2392)
329 IAC 10-14-1	A	00-185	26 IR 446	*CPH (26 IR 2392)
329 IAC 10-14-2	A	01-288	26 IR 1661	
329 IAC 10-15-1	A	00-185	26 IR 447	*CPH (26 IR 2392)
329 IAC 10-15-2	A	00-185	26 IR 448	*CPH (26 IR 2392)
329 IAC 10-15-5	A	00-185	26 IR 449	*CPH (26 IR 2392)
329 IAC 10-15-8	A	00-185	26 IR 450	*CPH (26 IR 2392)
329 IAC 10-15-12	N	00-185	26 IR 451	*CPH (26 IR 2392)
329 IAC 10-16-1	A	00-185	26 IR 452	*CPH (26 IR 2392)

329 IAC 10-16-8	A	00-185	26 IR 453	*CPH (26 IR 2392)
329 IAC 10-17-2	A	00-185	26 IR 453	*CPH (26 IR 2392)
329 IAC 10-17-7	A	00-185	26 IR 454	*CPH (26 IR 2392)
329 IAC 10-17-9	A	00-185	26 IR 456	*CPH (26 IR 2392)
329 IAC 10-17-12	A	00-185	26 IR 457	*CPH (26 IR 2392)
329 IAC 10-17-18	A	00-185	26 IR 458	*CPH (26 IR 2392)
329 IAC 10-19-1	A	00-185	26 IR 458	*CPH (26 IR 2392)
329 IAC 10-20-3	A	00-185	26 IR 459	*CPH (26 IR 2392)
329 IAC 10-20-8	A	00-185	26 IR 460	*CPH (26 IR 2392)
329 IAC 10-20-11	A	00-185	26 IR 461	*CPH (26 IR 2392)
329 IAC 10-20-12	A	00-185	26 IR 462	*CPH (26 IR 2392)
329 IAC 10-20-13	A	00-185	26 IR 463	*CPH (26 IR 2392)
329 IAC 10-20-14.1	A	01-288	26 IR 1662	
329 IAC 10-20-20	A	00-185	26 IR 463	*CPH (26 IR 2392)
329 IAC 10-20-24	A	00-185	26 IR 464	*CPH (26 IR 2392)
329 IAC 10-20-26	A	00-185	26 IR 464	*CPH (26 IR 2392)
329 IAC 10-20-28	A	00-185	26 IR 464	*CPH (26 IR 2392)
329 IAC 10-20-29	R	01-288	26 IR 1674	
329 IAC 10-21-1	A	00-185	26 IR 465	*CPH (26 IR 2392)
329 IAC 10-21-2	A	00-185	26 IR 468	*CPH (26 IR 2392)
329 IAC 10-21-4	A	00-185	26 IR 474	*CPH (26 IR 2392)
329 IAC 10-21-6	A	00-185	26 IR 477	*CPH (26 IR 2392)
329 IAC 10-21-7	A	00-185	26 IR 479	*CPH (26 IR 2392)
329 IAC 10-21-8	A	00-185	26 IR 480	*CPH (26 IR 2392)
329 IAC 10-21-9	A	00-185	26 IR 481	*CPH (26 IR 2392)
329 IAC 10-21-10	A	00-185	26 IR 482	*CPH (26 IR 2392)
329 IAC 10-21-13	A	00-185	26 IR 484	*CPH (26 IR 2392)
329 IAC 10-21-15	A	00-185	26 IR 488	*CPH (26 IR 2392)
329 IAC 10-21-16	A	00-185	26 IR 488	*CPH (26 IR 2392)
329 IAC 10-22-2	A	00-185	26 IR 493	*CPH (26 IR 2392)
329 IAC 10-22-3	A	00-185	26 IR 494	*CPH (26 IR 2392)
329 IAC 10-22-5	A	00-185	26 IR 494	*CPH (26 IR 2392)
329 IAC 10-22-6	A	00-185	26 IR 494	*CPH (26 IR 2392)
329 IAC 10-22-7	A	00-185	26 IR 495	*CPH (26 IR 2392)
329 IAC 10-22-8	A	00-185	26 IR 496	*CPH (26 IR 2392)
329 IAC 10-23-2	A	00-185	26 IR 496	*CPH (26 IR 2392)
329 IAC 10-23-3	A	00-185	26 IR 497	*CPH (26 IR 2392)
329 IAC 10-23-4	A	00-185	26 IR 498	*CPH (26 IR 2392)
329 IAC 10-24-4	A	00-185	26 IR 499	*CPH (26 IR 2392)
329 IAC 10-28-21	R	01-288	26 IR 1674	
329 IAC 10-28-24	A	01-288	26 IR 1664	
329 IAC 10-29-1	A	00-185	26 IR 499	*CPH (26 IR 2392)
329 IAC 10-30-4	A	00-185	26 IR 500	*CPH (26 IR 2392)
329 IAC 10-36-19	A	01-288	26 IR 1665	
329 IAC 10-37-4	A	00-185	26 IR 501	*CPH (26 IR 2392)
329 IAC 10-39-1	A	00-185	26 IR 501	*CPH (26 IR 2392)
329 IAC 10-39-2	A	00-185	26 IR 502	*CPH (26 IR 2392)
329 IAC 10-39-3	A	00-185	26 IR 508	*CPH (26 IR 2392)
329 IAC 10-39-7	A	00-185	26 IR 509	*CPH (26 IR 2392)
329 IAC 10-39-9	A	00-185	26 IR 509	*CPH (26 IR 2392)
329 IAC 10-39-10	A	00-185	26 IR 510	*CPH (26 IR 2392)
329 IAC 11-2-19.5	N	01-288	26 IR 1665	
329 IAC 11-2-39	A	01-288	26 IR 1666	
329 IAC 11-2-44	R	01-288	26 IR 1674	
329 IAC 11-3-2	A	01-288	26 IR 1666	
329 IAC 11-6-1	R	01-288	26 IR 1674	
329 IAC 11-7	R	01-288	26 IR 1674	
329 IAC 11-8-2	A	01-288	26 IR 1666	
329 IAC 11-8-2.5	N	01-288	26 IR 1666	
329 IAC 11-8-3	A	01-288	26 IR 1667	
329 IAC 11-9-6	N	01-288	26 IR 1667	
329 IAC 11-13-4	A	01-288	26 IR 1667	
329 IAC 11-13-6	A	01-288	26 IR 1668	
329 IAC 11-15-1	A	01-288	26 IR 1668	
329 IAC 11-19-2	A	01-288	26 IR 1669	
329 IAC 11-19-3	A	01-288	26 IR 1670	
329 IAC 11-20-1	A	01-288	26 IR 1670	
329 IAC 11-21-4	A	01-288	26 IR 1671	
329 IAC 11-21-5	A	01-288	26 IR 1671	
329 IAC 11-21-6	A	01-288	26 IR 1671	
329 IAC 11-21-7	A	01-288	26 IR 1671	
329 IAC 11-21-8	A	01-288	26 IR 1672	
329 IAC 12-8-4	A	01-288	26 IR 1672	
329 IAC 13-3-1	A	01-288	26 IR 1673	

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

345 IAC 1-3-1.5	A	01-413	25 IR 1996	
345 IAC 1-3-3	A	02-107	25 IR 4170	**26 IR 1523**
345 IAC 1-3-4	A	02-107	25 IR 4171	**26 IR 1524**
345 IAC 1-3-8	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 1-3-11	A	02-107	25 IR 4171	**26 IR 1524**
345 IAC 1-3-12	A	02-107	25 IR 4172	**26 IR 1525**
345 IAC 1-3-13	A	02-107	25 IR 4172	**26 IR 1525**
345 IAC 1-3-14	A	02-107	25 IR 4173	**26 IR 1526**
345 IAC 1-3-15	A	02-107	25 IR 4173	**26 IR 1527**
345 IAC 1-3-16	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 1-3-16.5	N	02-107	25 IR 4174	**26 IR 1527**
345 IAC 1-3-30	A	01-413	25 IR 1997	**26 IR 345**
			25 IR 2774	
345 IAC 2-7-1	A	01-413	25 IR 1998	**26 IR 346**
			25 IR 2775	
345 IAC 2-7-3	A	01-413	25 IR 1999	**26 IR 347**
			25 IR 2776	
345 IAC 2-7-4	A	01-413	25 IR 2000	**26 IR 348**
			25 IR 2777	
345 IAC 2-7-5	A	01-413	25 IR 2001	**26 IR 349**
			25 IR 2778	
345 IAC 3-5.1-1.2	A	02-107	25 IR 4175	**26 IR 1528**
345 IAC 3-5.1-1.5	A	02-107	25 IR 4176	**26 IR 1529**
345 IAC 3-5.1-2	A	02-107	25 IR 4176	**26 IR 1529**
345 IAC 3-5.1-3	A	02-107	25 IR 4176	**26 IR 1530**
345 IAC 3-5.1-3.5	N	02-107	25 IR 4177	**26 IR 1530**
345 IAC 3-5.1-4	A	02-107	25 IR 4177	**26 IR 1530**
345 IAC 3-5.1-6	A	02-107	25 IR 4177	**26 IR 1531**
345 IAC 3-5.1-7	A	02-107	25 IR 4178	**26 IR 1531**
345 IAC 3-5.1-8.5	A	02-107	25 IR 4179	**26 IR 1533**
345 IAC 3-5.1-8.7	A	02-107	25 IR 4180	**26 IR 1533**
345 IAC 3-5.1-8.8	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-8.9	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-9	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-10	A	02-107	25 IR 4181	**26 IR 1535**
345 IAC 3-5.1-12	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-14	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-15	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 7-5-1	A	02-126	25 IR 4182	**26 IR 1535**
345 IAC 7-5-2.1	N	02-126	25 IR 4183	**26 IR 1536**
345 IAC 7-5-2.5	A	02-126	25 IR 4183	**26 IR 1536**
345 IAC 7-5-3	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-4	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-5	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-6	A	02-126	25 IR 4184	**26 IR 1537**
345 IAC 7-5-7	A	02-126	25 IR 4184	**26 IR 1537**
345 IAC 7-5-8	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-9	A	02-126	25 IR 4184	**26 IR 1538**
345 IAC 7-5-11	A	02-126	25 IR 4185	**26 IR 1538**
345 IAC 7-5-15.1	A	02-126	25 IR 4185	**26 IR 1539**
345 IAC 7-5-16	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-16.1	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-21	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-22	A	02-126	25 IR 4186	**26 IR 1539**
345 IAC 7-5-24	A	02-126	25 IR 4186	**26 IR 1539**
345 IAC 7-5-25.7	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-26	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-27	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-28	A	02-126	25 IR 4186	**26 IR 1540**
345 IAC 7-7-1.5	N	01-377	25 IR 1991	*ARR (25 IR 3770)
			25 IR 4166	**26 IR 693**
345 IAC 7-7-2	A	01-377	25 IR 1991	*ARR (25 IR 3770)
			25 IR 4166	**26 IR 694**

345 IAC 7-7-3	A	01-377	25 IR 1992 25 IR 4167	*ARR (25 IR 3770) **26 IR 694**
345 IAC 7-7-3.5	N	01-377	25 IR 1993 25 IR 4168	*ARR (25 IR 3770) **26 IR 695**
345 IAC 7-7-4	A	01-377	25 IR 1993 25 IR 4168	*ARR (25 IR 3770) **26 IR 695**
345 IAC 7-7-5	A	01-377	25 IR 1993 25 IR 4168	*ARR (25 IR 3770) **26 IR 696**
345 IAC 7-7-6	R	01-377	25 IR 1994 25 IR 4169	*ARR (25 IR 3770) **26 IR 696**
345 IAC 7-7-7	A	01-377	25 IR 1994 25 IR 4169	*ARR (25 IR 3770) **26 IR 696**
345 IAC 7-7-8	R	01-377	25 IR 1994 25 IR 4169	*ARR (25 IR 3770) **26 IR 696**
345 IAC 7-7-9	R	01-377	25 IR 1994 25 IR 4169	*ARR (25 IR 3770) **26 IR 696**
345 IAC 7-7-10	A	01-377	25 IR 1994 25 IR 4169	*ARR (25 IR 3770) **26 IR 696**
345 IAC 8-2-1.1	A	01-392	25 IR 2758	**26 IR 329**
345 IAC 8-2-1.5	N	01-392	25 IR 2760	**26 IR 331**
345 IAC 8-2-1.7	N	01-392	25 IR 2760	**26 IR 331**
345 IAC 8-2-1.9	N	01-392	25 IR 2761	**26 IR 332**
345 IAC 8-2-2	A	01-392	25 IR 2762	**26 IR 333**
345 IAC 8-2-3	A	01-392	25 IR 2764	**26 IR 335**
345 IAC 8-2-3.5	N	01-392	25 IR 2766	**26 IR 337**
345 IAC 8-2-4	A	01-392	25 IR 2767	**26 IR 338**
345 IAC 8-3-1	A	01-392	25 IR 2769	**26 IR 340**
345 IAC 8-3-2	A	01-392	25 IR 2770	**26 IR 341**
345 IAC 8-3-3	N	01-392	25 IR 2770	
345 IAC 8-3-4	N	01-392	25 IR 2771	
345 IAC 8-3-9	N	01-392		**††26 IR 341** *ERR (26 IR 793)
345 IAC 8-3-10	N	01-392		**††26 IR 342** *ERR (26 IR 793)
345 IAC 8-4-1	A	01-392	25 IR 2771	**26 IR 342**
345 IAC 9-2.1-1	A	02-127	25 IR 4187	**26 IR 1540**
345 IAC 10-2.1-1	A	02-127	25 IR 4188	**26 IR 1541**

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

357 IAC 1-10	N	02-292	26 IR 1243	

TITLE 370 STATE EGG BOARD

370 IAC 1-1-1	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-1-2	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-1-3	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-1-4	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-1-5	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-2-1	A	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-2-2	A	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-2-3	N	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-3-1	A	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-3-2	A	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-3-3	A	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-3-4	A	01-419	26 IR 155	**26 IR 1544**
370 IAC 1-4-1	A	01-419	26 IR 155	**26 IR 1544**
370 IAC 1-4-2	A	01-419	26 IR 155	**26 IR 1545**
370 IAC 1-4-3	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-5-1	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-6-1	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-8-1	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-9-1	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-10-1	A	01-419	26 IR 156	**26 IR 1546**
370 IAC 1-10-2	A	01-419	26 IR 157	**26 IR 1546**

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

405 IAC 1-12-1	A	02-16	25 IR 2791	*NRA (25 IR 4128) **26 IR 718**
405 IAC 1-12-2	A	02-16	25 IR 2791	*NRA (25 IR 4128) **26 IR 718**
405 IAC 1-12-4	A	02-16	25 IR 2793	*NRA (25 IR 4128) **26 IR 720**
405 IAC 1-12-5	A	02-16	25 IR 2794	*NRA (25 IR 4128) **26 IR 721**
405 IAC 1-12-6	A	02-16	25 IR 2795	*NRA (25 IR 4128) **26 IR 722**
405 IAC 1-12-7	A	02-16	25 IR 2796	*NRA (25 IR 4128) **26 IR 723**
405 IAC 1-12-8	A	02-16	25 IR 2796	*NRA (25 IR 4128) **26 IR 723**
405 IAC 1-12-9	A	02-16	25 IR 2797	*NRA (25 IR 4128) **26 IR 724**
405 IAC 1-12-12	A	02-16	25 IR 2797	*NRA (25 IR 4128) **26 IR 724**
405 IAC 1-12-13	A	02-16	25 IR 2798	*NRA (25 IR 4128) **26 IR 725**
405 IAC 1-12-14	A	02-16	25 IR 2799	*NRA (25 IR 4128) **26 IR 726**
405 IAC 1-12-15	A	02-16	25 IR 2799	*NRA (25 IR 4128) **26 IR 726**
405 IAC 1-12-16	A	02-16	25 IR 2800	*NRA (25 IR 4128) **26 IR 727**
405 IAC 1-12-17	A	02-16	25 IR 2801	*NRA (25 IR 4128) **26 IR 728**
405 IAC 1-12-19	A	02-16	25 IR 2802	*NRA (25 IR 4128) **26 IR 729**
405 IAC 1-12-24	A	02-16	25 IR 2802	*NRA (25 IR 4128) **26 IR 730**
405 IAC 1-12-26	A	02-16	25 IR 2803	*NRA (25 IR 4128) **26 IR 730**
405 IAC 1-14.5-13	A	02-144	25 IR 3826	*NRA (26 IR 415) **26 IR 1080**
405 IAC 1-14.5-14	A	02-144	25 IR 3827	*NRA (26 IR 415) **26 IR 1081**
405 IAC 1-14.5-15	A	02-144	25 IR 3827	*NRA (26 IR 415) **26 IR 1081**
405 IAC 1-14.6-2	A	02-13	25 IR 2779	*NRA (26 IR 61) **26 IR 707**
	A	02-340	26 IR 2099	
405 IAC 1-14.6-4	A	02-13	25 IR 2782	*NRA (26 IR 61) **26 IR 709**
405 IAC 1-14.6-6	A	02-13	25 IR 2784	*NRA (26 IR 61) **26 IR 712**
	A	02-340	26 IR 2102	
405 IAC 1-14.6-7	A	02-13	25 IR 2785	*NRA (26 IR 61) **26 IR 712** *ERR (26 IR 2375)
	A	02-340	26 IR 2103	
405 IAC 1-14.6-9	A	02-13	25 IR 2786	*NRA (26 IR 61) **26 IR 714**
	A	02-340	26 IR 2104	
405 IAC 1-14.6-12	A	02-13	25 IR 2787	*NRA (26 IR 61) **26 IR 715**
405 IAC 1-14.6-16	A	02-13	25 IR 2788	*NRA (26 IR 61) **26 IR 716**
	A	02-340	26 IR 2105	
405 IAC 1-14.6-22	A	02-13	25 IR 2788	*NRA (26 IR 61) **26 IR 716**
	A	02-340	26 IR 2106	
405 IAC 1-16-2	A	02-214	26 IR 158	
405 IAC 1-16-4	A	02-214	26 IR 159	
405 IAC 1-18-2	A	02-121	25 IR 3243	*NRA (26 IR 61) **26 IR 1079**
405 IAC 1-18-3	R	02-121	25 IR 3243	*NRA (26 IR 61) **26 IR 1080**
405 IAC 1-19	N	02-184	26 IR 511	*NRA (26 IR 1960)
405 IAC 1-20	N	02-184	26 IR 512	*NRA (26 IR 1960)
405 IAC 2-3-1.2				*ERR (26 IR 35)
405 IAC 2-3-17	A	02-234	26 IR 516	*NRA (26 IR 1960)

405 IAC 2-3-21	A	02-234	26 IR 517	*NRA (26 IR 1960)
405 IAC 2-3-23	N	02-45	25 IR 2555	*NRA (25 IR 3804)
				26 IR 731
405 IAC 2-8-1	A	02-87	25 IR 2804	*NRA (26 IR 61)
				26 IR 731
405 IAC 2-8-1.1	N	02-87	25 IR 2805	*NRA (26 IR 61)
				26 IR 732
405 IAC 2-9				*ERR (26 IR 35)
405 IAC 2-10	N	02-145	25 IR 3829	*NRA (26 IR 415)
				26 IR 1547
405 IAC 4-1	RA	02-275	26 IR 544	**26 IR 1261**
405 IAC 4-1-1				*ERR (26 IR 383)
405 IAC 5-12-1	A	02-49	25 IR 2555	*AROC (26 IR 884)
				*NRA (26 IR 1960)
405 IAC 5-12-2	R	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
405 IAC 5-12-3	A	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
405 IAC 5-12-4	R	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
405 IAC 5-12-5	R	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
405 IAC 5-12-6	R	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
405 IAC 5-12-7	R	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
405 IAC 5-14-1	A	02-50	25 IR 2556	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 415)
				26 IR 1546
405 IAC 5-14-2	A	02-140	25 IR 3823	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
	A	02-277	26 IR 864	
405 IAC 5-14-2.5	N	02-140	25 IR 3823	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
405 IAC 5-14-3	A	02-140	25 IR 3824	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
	A	02-277	26 IR 865	
405 IAC 5-14-4	A	02-140	25 IR 3824	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
405 IAC 5-14-6	A	02-140	25 IR 3824	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
	A	02-277	26 IR 865	
405 IAC 5-14-10	R	02-277	26 IR 866	
405 IAC 5-14-11	A	02-277	26 IR 865	
405 IAC 5-14-15	A	02-277	26 IR 865	
405 IAC 5-14-16	A	02-277	26 IR 866	
405 IAC 5-14-17	A	02-277	26 IR 866	
405 IAC 5-14-18	A	02-277	26 IR 866	
405 IAC 5-19-1	A	01-301	25 IR 3811	*NRA (26 IR 809)
				26 IR 1901
405 IAC 5-19-3	A	02-207	26 IR 514	
405 IAC 5-24-4				*ERR (26 IR 35)
405 IAC 5-24-7	A	02-141	25 IR 3825	*NRA (26 IR 62)
				26 IR 732
405 IAC 5-24-13	N	02-207	26 IR 515	
405 IAC 5-31-4	A	02-207	26 IR 515	
405 IAC 5-34-1	A	02-214	26 IR 159	
405 IAC 5-34-2	A	02-214	26 IR 159	
405 IAC 5-34-3	A	02-214	26 IR 160	
405 IAC 5-34-4	A	02-214	26 IR 160	
405 IAC 5-34-4.1	N	02-214	26 IR 162	
405 IAC 5-34-4.2	N	02-214	26 IR 162	
405 IAC 5-34-5	A	02-214	26 IR 162	
405 IAC 5-34-6	A	02-214	26 IR 162	
405 IAC 5-34-7	A	02-214	26 IR 163	
405 IAC 6-2-3	A	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
405 IAC 6-2-5	A	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
405 IAC 6-2-5.3	N	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
405 IAC 6-2-5.5	N	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
405 IAC 6-2-9	A	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-12	A	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-12.5	N	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-14	A	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-16.5	N	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-18	A	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-20	A	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-20.5	N	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 699
405 IAC 6-2-21	A	01-373	25 IR 3815	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 699
405 IAC 6-2-22.5	N	01-373	25 IR 3815	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 699
405 IAC 6-3-2	A	01-373	25 IR 3815	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 699
405 IAC 6-3-3	A	01-373	25 IR 3815	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 699
405 IAC 6-4-2	A	01-373	25 IR 3815	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 699
405 IAC 6-5-1	A	01-373	25 IR 3816	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 700
405 IAC 6-5-2	A	01-373	25 IR 3816	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 700
405 IAC 6-5-3	A	01-373	25 IR 3816	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 700

405 IAC 6-5-4	A	01-373	25 IR 3816	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-5-5	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-5-6	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-6-2	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-6-3	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-6-4	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 702**
405 IAC 6-8	N	01-373	25 IR 3818	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 702**
405 IAC 6-9	N	01-373	25 IR 3818	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 702**
405 IAC 7	N	02-234	26 IR 518	*NRA (26 IR 1960)

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

407 IAC 2-3-1				*ERR (26 IR 383)

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

410 IAC 6-2	R	02-142	25 IR 4197	*CPH (26 IR 812)
410 IAC 6-2.1	N	02-142	25 IR 4188	*CPH (26 IR 812)
410 IAC 6-7.1				*ERR (26 IR 36)
410 IAC 6-7.2				*ERR (26 IR 36)
410 IAC 7-22	N	02-266	26 IR 1245	
410 IAC 15-1.5-4	A	02-43	26 IR 164	**26 IR 1550**
410 IAC 15-1.5-5	A	02-43	26 IR 166	**26 IR 1551**
410 IAC 16.2-1-0.5	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-1	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-2	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-2.1	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-2.2	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-3	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-3.5	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-5	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-6	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-6.5	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-7	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-8	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-9	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-10.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-10.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-11	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-12.5	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-14	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-14.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-14.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-15	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-15.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-15.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-15.3	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-16	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-17	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-18	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-18.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-18.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-19	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-19.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-20	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-21	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-22	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-22.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-22.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-23	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-24	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-25	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-26	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-26.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-27	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-27.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-28	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-29	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-29.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-30	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-31	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-31.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-32	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-32.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-32.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-33	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-34	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-35	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-36	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-37	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-38	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-39	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-39.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-41.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-42	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-44	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-45	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-46	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-47	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-48	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1.1	N	02-89	25 IR 3244	**26 IR 1902**
410 IAC 16.2-5-0.5	N	02-89	25 IR 3252	**26 IR 1911**
410 IAC 16.2-5-1.1	A	02-89	25 IR 3252	**26 IR 1912**
410 IAC 16.2-5-1.2	A	02-89	25 IR 3254	**26 IR 1914**
410 IAC 16.2-5-1.3	A	02-89	25 IR 3259	**26 IR 1919**
410 IAC 16.2-5-1.4	A	02-89	25 IR 3261	**26 IR 1921**
410 IAC 16.2-5-1.5	A	02-89	25 IR 3263	**26 IR 1923**
410 IAC 16.2-5-1.6	A	02-89	25 IR 3265	**26 IR 1925**
410 IAC 16.2-5-1.7	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-2	A	02-89	25 IR 3269	**26 IR 1929**
410 IAC 16.2-5-3	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-4	A	02-89	25 IR 3270	**26 IR 1929**
410 IAC 16.2-5-5	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-5.1	N	02-89	25 IR 3271	**26 IR 1931**
410 IAC 16.2-5-6	A	02-89	25 IR 3272	**26 IR 1932**
410 IAC 16.2-5-7	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-7.1	N	02-89	25 IR 3274	**26 IR 1933**
410 IAC 16.2-5-8	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-8.1	N	02-89	25 IR 3274	**26 IR 1934**
410 IAC 16.2-5-9	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-10	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-11	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-11.1	N	02-89	25 IR 3275	**26 IR 1935**
410 IAC 16.2-5-12	N	02-89	25 IR 3276	**26 IR 1935**

TITLE 412 INDIANA HEALTH FACILITIES COUNCIL

412 IAC 2				*ERR (26 IR 36) *ERR (26 IR 1572)
412 IAC 2-1-1	A	02-41	25 IR 4198	**26 IR 1937**
412 IAC 2-1-2.1	N	02-41	25 IR 4198	**26 IR 1937** *ERR (26 IR 2375)
412 IAC 2-1-2.2	N	02-41	25 IR 4198	**26 IR 1937** *ERR (26 IR 2375)

412 IAC 2-1-6	A	02-41	25 IR 4199	**26 IR 1937**
412 IAC 2-1-8	A	02-41	25 IR 4199	**26 IR 1938**
412 IAC 2-1-10	N	02-41	25 IR 4199	**26 IR 1938**
412 IAC 2-1-11	N	02-41	25 IR 4200	**26 IR 1939**
412 IAC 2-1-12	N	02-41	25 IR 4200	**26 IR 1939**
412 IAC 2-1-13	N	02-41	25 IR 4200	**26 IR 1939**
412 IAC 2-1-14	N	02-41	25 IR 4200	**26 IR 1939**

TITLE 431 COMMUNITY RESIDENTIAL FACILITIES COUNCIL

431 IAC 1.1-1-2				*ERR (26 IR 36)
431 IAC 7	N	02-211	26 IR 2108	

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

440 IAC 1-1.5	R	02-42	25 IR 3289	*NRA (26 IR 62)
				26 IR 745
440 IAC 1.5	N	02-42	25 IR 3277	*NRA (26 IR 62)
				26 IR 733
440 IAC 4-3-1	A	02-218	26 IR 519	*NRA (26 IR 2390)
440 IAC 4.1-2-1	A	02-218	26 IR 519	*NRA (26 IR 2390)
440 IAC 4.1-2-4	A	02-218	26 IR 520	*NRA (26 IR 2390)
440 IAC 4.1-2-5	A	02-218	26 IR 521	*NRA (26 IR 2390)
440 IAC 4.1-2-9	A	02-218	26 IR 521	*NRA (26 IR 2390)
440 IAC 4.1-3	N	02-218	26 IR 522	*NRA (26 IR 2390)
440 IAC 5-1-1	A	02-105	25 IR 3289	*NRA (26 IR 62)
				26 IR 745
440 IAC 5-1-2	A	02-105	25 IR 3290	*NRA (26 IR 62)
				26 IR 746
440 IAC 5-1-3.5	N	02-105	25 IR 3290	*NRA (26 IR 62)
				26 IR 747
440 IAC 6-2-2				*ERR (26 IR 1572)
440 IAC 9-2-10	N	02-106	25 IR 4201	*NRA (26 IR 1112)
				26 IR 1940
440 IAC 9-2-11	N	02-106	25 IR 4202	*NRA (26 IR 1112)
				26 IR 1941
440 IAC 9-2-12	N	02-106	25 IR 4203	*NRA (26 IR 1112)
				26 IR 1942
440 IAC 9-2-13	N	02-265	26 IR 867	

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

460 IAC 1-3-1	R	02-319	26 IR 2112	
460 IAC 1-3-2	R	02-319	26 IR 2112	
460 IAC 1-3-3	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	
460 IAC 1-3-4	R	02-319	26 IR 2112	
460 IAC 1-3-5	R	02-319	26 IR 2112	
460 IAC 1-3-6	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	
460 IAC 1-3-7	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	
460 IAC 1-3-8	R	02-319	26 IR 2112	
460 IAC 1-3-9	R	02-319	26 IR 2112	
460 IAC 1-3-10	R	02-319	26 IR 2112	
460 IAC 1-3-12	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	
460 IAC 1-3-13	R	02-319	26 IR 2112	
460 IAC 1-3-14	R	02-319	26 IR 2112	
460 IAC 1-3-15	R	02-319	26 IR 2112	
460 IAC 1-3.3	N	02-319	26 IR 2111	
460 IAC 1-8	N	01-337	25 IR 2557	**26 IR 350**
460 IAC 2-3-1	A	02-9	25 IR 2286	**26 IR 747**
460 IAC 2-3-2	A	02-9	25 IR 2286	**26 IR 747**
460 IAC 2-3-3	A	02-9	25 IR 2287	**26 IR 748**
460 IAC 5-1-13	A	02-151	26 IR 524	
460 IAC 6	N	02-46	25 IR 3832	**26 IR 749**
				*AROC (26 IR 883)
460 IAC 7	N	02-210	26 IR 525	*ARR (26 IR 1110)
			26 IR 1247	*AROC (26 IR 2472)

TITLE 470 DIVISION OF FAMILY AND CHILDREN

470 IAC 3-4.1	R	02-298	26 IR 1719	
470 IAC 3-4.2	R	02-298	26 IR 1719	
470 IAC 3-4.7	N	02-298	26 IR 1675	
470 IAC 3.1-12-2	A	02-74	26 IR 167	*NRA (26 IR 1112)
				*AROC (26 IR 1264)
				26 IR 2320
470 IAC 3.1-12-7	N	02-74	26 IR 168	*NRA (26 IR 1112)
				*AROC (26 IR 1264)
				26 IR 2320
470 IAC 8.1-2-12	A	02-152	26 IR 530	
470 IAC 11.1-1-5	A	02-203	26 IR 169	*NRA (26 IR 1112)
				26 IR 2321

TITLE 480 VIOLENT CRIME COMPENSATION DIVISION

480 IAC 1-1-1	A	01-194	25 IR 164	*CPH (25 IR 831)
480 IAC 1-1-2	A	01-194	25 IR 164	*CPH (25 IR 831)
480 IAC 1-1-3	A	01-194	25 IR 165	*CPH (25 IR 831)
480 IAC 1-1-4.1	A	01-194	25 IR 165	*CPH (25 IR 831)
480 IAC 1-1-5	A	01-194	25 IR 165	*CPH (25 IR 831)
480 IAC 1-1-6	A	01-194	25 IR 166	*CPH (25 IR 831)
480 IAC 1-1-7	A	01-194	25 IR 167	*CPH (25 IR 831)
480 IAC 1-1-8	A	01-194	25 IR 167	*CPH (25 IR 831)
480 IAC 1-1-9	A	01-194	25 IR 167	*CPH (25 IR 831)
480 IAC 1-1-10	A	01-194	25 IR 169	*CPH (25 IR 831)
480 IAC 1-2-1	A	01-194	25 IR 169	*CPH (25 IR 831)
480 IAC 1-2-2	A	01-194	25 IR 169	*CPH (25 IR 831)
480 IAC 1-2-3	A	01-194	25 IR 170	*CPH (25 IR 831)

TITLE 511 INDIANA STATE BOARD OF EDUCATION

511 IAC 5-1-2	A	02-67	25 IR 2807	**26 IR 786**
511 IAC 5-1-3.5	A	02-67	25 IR 2807	**26 IR 787**
511 IAC 5-1-5	A	02-67	25 IR 2807	**26 IR 787**
511 IAC 5-1-6	A	02-67	25 IR 2807	**26 IR 787**
511 IAC 5-2-3	A	02-170	25 IR 4204	
511 IAC 5-2-4	A	02-170	25 IR 4205	
511 IAC 6-7-6.5	A	02-177	25 IR 4205	
511 IAC 6.1-1-11.5				*ERR (26 IR 36)
511 IAC 6.1-5.1-5	A	02-177	25 IR 4206	
	A	02-178	25 IR 4207	
511 IAC 6.1-5.1-8	A	02-274	26 IR 1252	
511 IAC 6.2-6-4	A	02-264	26 IR 1719	
511 IAC 6.2-6-6.1	N	02-264	26 IR 1720	
511 IAC 6.2-6-8	A	02-264	26 IR 1720	
511 IAC 6.2-6-12	A	02-264	26 IR 1720	
511 IAC 6.2-7	N	02-264	26 IR 1720	

TITLE 515 PROFESSIONAL STANDARDS BOARD

515 IAC 1-3	R	02-314	26 IR 1257	
515 IAC 1-4-1	A	02-75	25 IR 4207	**26 IR 2322**
515 IAC 1-4-2	A	02-75	25 IR 4208	**26 IR 2323**
515 IAC 1-6				*ERR (26 IR 36)
515 IAC 1-7	N	02-314	26 IR 1254	
515 IAC 3				*ERR (26 IR 37)
515 IAC 4	N	02-8	25 IR 2292	*ARR (25 IR 3183)
				*ARR (25 IR 3770)
515 IAC 5	N	02-80	25 IR 2808	**26 IR 2325**
515 IAC 8	N	03-10	26 IR 2437	
515 IAC 9	N	03-11	26 IR 2451	

TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY

540 IAC 1-7-2	A	02-287	26 IR 1257	*CPH (26 IR 1593)
540 IAC 1-8-2	A	02-287	26 IR 1258	*CPH (26 IR 1593)
540 IAC 1-9-2.6	R	02-287	26 IR 1258	*CPH (26 IR 1593)
540 IAC 1-10-1	A	02-287	26 IR 1258	*CPH (26 IR 1593)

TITLE 550 BOARD OF TRUSTEES OF THE INDIANA STATE TEACHERS' RETIREMENT FUND

550 IAC 3-1-1	A	02-325	26 IR 2112	
550 IAC 3-1-2	A	02-325	26 IR 2113	
550 IAC 3-1-3	A	02-325	26 IR 2113	

550 IAC 3-2-1	A	02-325	26 IR 2113	
550 IAC 3-2-2	A	02-325	26 IR 2114	
550 IAC 5	N	02-325	26 IR 2114	
550 IAC 6	N	02-325	26 IR 2115	
TITLE 570 INDIANA COMMISSION ON PROPRIETARY EDUCATION				
570 IAC 1-14	N	02-233	26 IR 867	
TITLE 575 STATE SCHOOL BUS COMMITTEE				
575 IAC 1-1-4.6	N	02-315	26 IR 1723	
TITLE 610 DEPARTMENT OF LABOR				
610 IAC 4-2-1	A	03-36	26 IR 2463	
610 IAC 4-2-11	R	03-36	26 IR 2464	
610 IAC 4-4	R	01-340	25 IR 891	*ARR (25 IR 3770) **26 IR 370** *AROC (26 IR 547)
610 IAC 4-6	N	01-340	25 IR 874	*ARR (25 IR 3770) **26 IR 353** *AROC (26 IR 547)
610 IAC 4-6-11	A	03-37	26 IR 2464	
TITLE 631 WORKER'S COMPENSATION BOARD OF INDIANA				
631 IAC 1-1-1.1	N	01-424	25 IR 2030	
631 IAC 1-1-24.1	N	01-424	25 IR 2030	
TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION				
655 IAC 1-1				*ERR (26 IR 383)
655 IAC 1-1-1.1				*ERR (25 IR 1645)
655 IAC 1-2.1	RA	02-128	25 IR 3883	*CPH (26 IR 416) **26 IR 1262**
TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION				
675 IAC 12-3-13	N	02-90	25 IR 2573	**26 IR 1556**
675 IAC 12-3-14	N	02-90	25 IR 2574	**26 IR 1557**
675 IAC 12-3-15	N	02-90		**††26 IR 1558**
675 IAC 13-1-8	A	02-51	25 IR 2561	**26 IR 1095**
675 IAC 13-1-10	A	02-51	25 IR 2564	**26 IR 1098**
675 IAC 13-2.3	R	02-115	25 IR 3366	*ARR (26 IR 2376)
675 IAC 13-2.4	N	02-115	25 IR 3291	*ARR (26 IR 2376)
675 IAC 14-4.2-181.1	N	01-376		**††26 IR 11**
675 IAC 14-4.2-182.1	N	01-376	25 IR 1248	**26 IR 11**
675 IAC 14-4.2-185.1	N	01-376	25 IR 1248	**26 IR 11**
675 IAC 14-4.2-187	A	01-376	25 IR 1248	**26 IR 11**
675 IAC 14-4.2-187.1	N	01-376	25 IR 1248	**26 IR 12**
675 IAC 14-4.2-187.2	N	01-376	25 IR 1248	**26 IR 12**
675 IAC 14-4.2-187.3	N	01-376	25 IR 1248	**26 IR 12**
675 IAC 14-4.2-187.4	N	01-376	25 IR 1248	**26 IR 12**
675 IAC 14-4.2-190.1	N	01-376	25 IR 1249	**26 IR 12**
675 IAC 14-4.2-190.2	N	01-376	25 IR 1249	**26 IR 12**
675 IAC 14-4.2-190.3	N	01-376	25 IR 1249	**26 IR 12**
675 IAC 14-4.2-190.4	N	01-376	25 IR 1249	**26 IR 12**
675 IAC 14-4.2-190.5	N	01-376	25 IR 1249	**26 IR 13**
675 IAC 14-4.2-191.1	N	01-376	25 IR 1249	**26 IR 13**
675 IAC 14-4.2-191.2	N	01-376	25 IR 1249	**26 IR 13**
675 IAC 14-4.2-191.3	N	01-376	25 IR 1249	**26 IR 13**
675 IAC 14-4.2-191.4	N	01-376		**††26 IR 13**
675 IAC 14-4.2-191.5	N	01-376		**††26 IR 13**
675 IAC 14-4.2-192.1	N	01-376	25 IR 1250	**26 IR 13**
675 IAC 14-4.2-192.2	N	01-376	25 IR 1251	**26 IR 13**
675 IAC 14-4.2-192.3	N	01-376	25 IR 1250	**26 IR 14**
675 IAC 14-4.2-192.4	N	01-376	25 IR 1250	**26 IR 14**
675 IAC 14-4.2-192.5	N	01-376	25 IR 1250	**26 IR 14**
675 IAC 14-4.2-192.6	N	01-376	25 IR 1250	**26 IR 14**
675 IAC 14-4.2-193.1	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-193.2	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-193.3	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-193.4	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-193.5	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-194.1	N	01-376	25 IR 1251	**26 IR 15**
675 IAC 14-4.2-194.2	N	01-376	25 IR 1251	**26 IR 15**
675 IAC 14-4.2-194.3	N	01-376	25 IR 1251	**26 IR 15**
675 IAC 14-4.2-194.4	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 14-4.2-194.5	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 14-4.2-194.6	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 14-4.2-194.7	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 17-1.5	R	01-376	25 IR 1255	**26 IR 19**
675 IAC 17-1.6	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 18-1.3	R	02-116	25 IR 3381	*ARR (26 IR 2376)
675 IAC 18-1.4	N	02-116	25 IR 3366	*ARR (26 IR 2376)
675 IAC 20-2-17	A	02-52	25 IR 2566	**26 IR 1100**
675 IAC 20-2-20	A	02-52	25 IR 2566	**26 IR 1101**
675 IAC 20-2-24	A	02-52	25 IR 2567	**26 IR 1102**
675 IAC 20-2-26	A	02-52	25 IR 2567	**26 IR 1102**
675 IAC 20-3-5	A	02-52	25 IR 2568	**26 IR 1102**
675 IAC 20-3-6	A	02-52	25 IR 2568	**26 IR 1103**
675 IAC 20-3-7	A	02-52	25 IR 2569	**26 IR 1103**
675 IAC 21-1-1	A	01-430	25 IR 2031	*ARR (26 IR 38) **26 IR 1083**
675 IAC 21-1-1.5	N	01-430	25 IR 2031	*ARR (26 IR 38) **26 IR 1084**
675 IAC 21-1-2	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-2.1	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-3	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-3.1	A	01-430	25 IR 2032	*ARR (26 IR 38) **26 IR 1085**
675 IAC 21-1-4	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-6	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-7	A	01-430	25 IR 2033	*ARR (26 IR 38) **26 IR 1085**
675 IAC 21-1-8	R	01-430		**††26 IR 1095**
675 IAC 21-1-9	A	01-430	25 IR 2033	*ARR (26 IR 38) **26 IR 1086**
675 IAC 21-1-10	N	01-430	25 IR 2034	*ARR (26 IR 38) **26 IR 1086**
675 IAC 21-2	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-3-1	A	01-430	25 IR 2034	*ARR (26 IR 38) **26 IR 1087**
675 IAC 21-3-2	A	01-430	25 IR 2034	*ARR (26 IR 38) **26 IR 1087**
675 IAC 21-4-1	A	01-430	25 IR 2037	*ARR (26 IR 38) **26 IR 1090**
675 IAC 21-4-2	A	01-430	25 IR 2037	*ARR (26 IR 38) **26 IR 1090**
675 IAC 21-5-1	A	01-430	25 IR 2039	*ARR (26 IR 38) **26 IR 1092**
675 IAC 21-5-3	N	01-430	25 IR 2039	*ARR (26 IR 38) **26 IR 1092**
675 IAC 21-6	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-7	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-8	N	01-430	25 IR 2040	*ARR (26 IR 38) **26 IR 1093**
675 IAC 22-2.2	R	02-117	25 IR 3442	*ARR (26 IR 2376)
675 IAC 22-2.2-14	A	02-53	25 IR 2569	**26 IR 1553**
675 IAC 22-2.3	N	02-117	25 IR 3382	*ARR (26 IR 2376)
675 IAC 25	N	02-118	25 IR 3444	*ARR (26 IR 2376)

TITLE 760 DEPARTMENT OF INSURANCE

760 IAC 1-5	R	01-399	25 IR 2582	*AROC (26 IR 183) *ARR (26 IR 38) **26 IR 26**
760 IAC 1-5.1	N	01-399	25 IR 2575	*AROC (26 IR 183) *ARR (26 IR 38) **26 IR 19**
760 IAC 1-14	R	01-399	25 IR 2582	*AROC (26 IR 183) *ARR (26 IR 38) **26 IR 26**
760 IAC 1-21-2	A	02-299	26 IR 1724	
760 IAC 1-21-5	A	02-299	26 IR 1724	
760 IAC 1-21-8	A	02-299	26 IR 1724	
760 IAC 1-50-2	A	02-23	25 IR 2582	
760 IAC 1-50-3	A	02-23	25 IR 2582	
760 IAC 1-50-4	A	02-23	25 IR 2583	
760 IAC 1-50-5	A	02-23	25 IR 2583	
760 IAC 1-50-7	A	02-23	25 IR 2584	
760 IAC 1-50-13	A	02-23	25 IR 2584	
760 IAC 1-50-13.5	A	02-23	25 IR 2585	
760 IAC 1-59-1	A	02-124	26 IR 170	**26 IR 2326**
760 IAC 1-59-2	A	02-124	26 IR 170	**26 IR 2326**
760 IAC 1-59-3	A	02-124	26 IR 171	**26 IR 2327**
760 IAC 1-59-4	A	02-124	26 IR 171	**26 IR 2327**
760 IAC 1-59-5	A	02-124	26 IR 171	**26 IR 2327**
760 IAC 1-59-6	A	02-124	26 IR 172	**26 IR 2328**
760 IAC 1-59-7	A	02-124	26 IR 172	**26 IR 2329**
760 IAC 1-59-8	A	02-124	26 IR 173	**26 IR 2329**
760 IAC 1-59-9	A	02-124	26 IR 174	**26 IR 2330**
760 IAC 1-59-10	A	02-124	26 IR 174	**26 IR 2330**
760 IAC 1-59-11	A	02-124	26 IR 174	**26 IR 2330**
760 IAC 1-59-12	A	02-124	26 IR 175	**26 IR 2331**
760 IAC 1-59-13	R	02-124	26 IR 177	**26 IR 2333**
760 IAC 1-59-14	A	02-124	26 IR 175	**26 IR 2331**
760 IAC 1-68	N	02-137	26 IR 531	*AROC (26 IR 883)

TITLE 762 INDIANA POLITICAL SUBDIVISION RISK MANAGEMENT COMMISSION

762 IAC 2	N	02-24	25 IR 2301	*ARR (25 IR 4114) **26 IR 27**

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

804 IAC 1.1-3-1	A	02-20	25 IR 3446	**26 IR 370** *ERR (26 IR 793)

TITLE 808 STATE BOXING COMMISSION

808 IAC 2-6-1	A	02-120	25 IR 4210	**26 IR 1104**

TITLE 816 BOARD OF BARBER EXAMINERS

816 IAC 1-3-1	A	02-320	26 IR 1725	

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 4-4-5				*ERR (26 IR 1109)
820 IAC 4-4-14				*ERR (26 IR 1109)
820 IAC 6-2-1				*ERR (26 IR 1109)

TITLE 825 INDIANA GRAIN INDEMNITY CORPORATION

825 IAC 1	RA	02-176	25 IR 4220	**26 IR 1262**
825 IAC 1-1-5	R	02-179	25 IR 4211	
825 IAC 1-5-1	R	02-179	25 IR 4211	
825 IAC 1-5-2	R	02-179	25 IR 4211	

TITLE 828 STATE BOARD OF DENTISTRY

828 IAC 0.5-2-3	A	02-114	25 IR 3452	**26 IR 376**
828 IAC 0.5-2-4	A	02-114	25 IR 3453	**26 IR 376**
828 IAC 0.5-2-6	N	02-112	25 IR 3447	**26 IR 371**
828 IAC 1-3-1	R	02-113	25 IR 3452	**26 IR 375**
828 IAC 1-3-1.1	N	02-113	25 IR 3450	**26 IR 373** *ERR (26 IR 383)
828 IAC 1-3-1.5	N	02-113	25 IR 3451	**26 IR 374**
828 IAC 1-3-2	A	02-113	25 IR 3452	**26 IR 375**
828 IAC 1-3-3	A	02-113	25 IR 3452	**26 IR 375**
828 IAC 1-5-1	A	02-112	25 IR 3448	**26 IR 371**
828 IAC 1-5-1.5	N	02-112	25 IR 3448	**26 IR 371**
828 IAC 1-5-2	A	02-112	25 IR 3448	**26 IR 372**
828 IAC 1-5-2.5	N	02-112	25 IR 3449	**26 IR 372**
828 IAC 1-6-1	A	02-112	25 IR 3449	**26 IR 373**
828 IAC 1-7-1	A	02-114	25 IR 3453	**26 IR 376**
828 IAC 1-7-2	N	02-114	25 IR 3453	**26 IR 377**

TITLE 832 STATE BOARD OF FUNERAL AND CEMETERY SERVICE

832 IAC 2-1-2	A	02-147	26 IR 870	

TITLE 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

836 IAC 1-1-1	A	02-91	25 IR 2810	*CPH (25 IR 3807) **26 IR 2333**
836 IAC 1-1-2	N	02-91	25 IR 2812	*CPH (25 IR 3807) **26 IR 2335**
836 IAC 1-1-3	N	02-91	25 IR 2812	*CPH (25 IR 3807) **26 IR 2336**
836 IAC 1-2-1	A	02-91	25 IR 2813	*CPH (25 IR 3807) **26 IR 2337**
836 IAC 1-2-2	A	02-91	25 IR 2814	*CPH (25 IR 3807) **26 IR 2338**
836 IAC 1-2-3	A	02-91	25 IR 2815	*CPH (25 IR 3807) **26 IR 2339**
836 IAC 1-2-4	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 1-3-5	A	02-91	25 IR 2818	*CPH (25 IR 3807) **26 IR 2342**
836 IAC 1-3-6	N	02-91	25 IR 2819	*CPH (25 IR 3807) **26 IR 2343**
836 IAC 1-8-1	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 1-11-1	A	02-91	25 IR 2819	*CPH (25 IR 3807) **26 IR 2343**
836 IAC 1-11-2	A	02-91	25 IR 2820	*CPH (25 IR 3807) **26 IR 2344**
836 IAC 1-11-4	A	02-91	25 IR 2821	*CPH (25 IR 3807) **26 IR 2345**
836 IAC 1-11-5	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 2	RA	01-40	24 IR 2580	
836 IAC 2-1-1	A	02-91	25 IR 2821	*CPH (25 IR 3807) **26 IR 2345**
836 IAC 2-2-1	A	02-91	25 IR 2824	*CPH (25 IR 3807) **26 IR 2348**
836 IAC 2-7.1-1	A	02-91	25 IR 2826	*CPH (25 IR 3807) **26 IR 2350**
836 IAC 2-7.2	N	02-91	25 IR 2828	*CPH (25 IR 3807) **26 IR 2353**
836 IAC 2-12-1	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 2-13-1	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 2-14-5	A	02-91	25 IR 2833	*CPH (25 IR 3807) **26 IR 2357**
836 IAC 3	RA	01-40	24 IR 2580	
836 IAC 3-2-4	A	02-91	25 IR 2834	*CPH (25 IR 3807) **26 IR 2358**
836 IAC 3-2-5	A	02-91	25 IR 2835	*CPH (25 IR 3807) **26 IR 2360**

836 IAC 3-2-8	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 3-3-4	A	02-91	25 IR 2836	*CPH (25 IR 3807) **26 IR 2360**
836 IAC 3-3-5	A	02-91	25 IR 2837	*CPH (25 IR 3807) **26 IR 2362**
836 IAC 3-3-8	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 3-4-1	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 4-1-1	A	02-91	25 IR 2838	*CPH (25 IR 3807) **26 IR 2362**
836 IAC 4-2-1	A	02-91	25 IR 2840	*CPH (25 IR 3807) **26 IR 2364**
836 IAC 4-2-2	A	02-91	25 IR 2841	*CPH (25 IR 3807) **26 IR 2365**
836 IAC 4-2-5	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 4-3-2	A	02-91	25 IR 2841	*CPH (25 IR 3807) **26 IR 2366**
836 IAC 4-4-1	A	02-91	25 IR 2842	*CPH (25 IR 3807) **26 IR 2366**
836 IAC 4-5-2	A	02-91	25 IR 2843	*CPH (25 IR 3807) **26 IR 2367**
836 IAC 4-6.1	N	02-91	25 IR 2843	*CPH (25 IR 3807) **26 IR 2368**
836 IAC 4-7-2	A	02-91	25 IR 2844	*CPH (25 IR 3807) **26 IR 2368**
836 IAC 4-7-3.5	N	01-297	25 IR 499	**25 IR 2517**
836 IAC 4-7.1	N	02-91	25 IR 2844	*CPH (25 IR 3807) **26 IR 2369**
836 IAC 4-9-3	A	02-91	25 IR 2847	*CPH (25 IR 3807) **26 IR 2372**
836 IAC 4-10-1	R	02-91	25 IR 2848	*CPH (25 IR 3807) **26 IR 2372**

TITLE 839 SOCIAL WORKER, MARRIAGE AND FAMILY THERAPIST, AND MENTAL HEALTH COUNSELOR BOARD

839 IAC 1-2-2.1	A	02-271	26 IR 874	
839 IAC 1-2-5	A	02-271	26 IR 875	
839 IAC 1-3-2	A	02-270	26 IR 871	*ARR (26 IR 1945)
839 IAC 1-4-5	A	02-270	26 IR 871	*ARR (26 IR 1945)
839 IAC 1-5-1	A	02-270	26 IR 872	*ARR (26 IR 1945)
839 IAC 1-5-1.5	N	02-270	26 IR 874	*ARR (26 IR 1945)

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

840 IAC 1-1-4	A	02-219	26 IR 540	**26 IR 1943**

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

844 IAC 2.2-2-1	A	02-180	26 IR 177	**26 IR 1558**
844 IAC 2.2-2-2	A	02-180	26 IR 178	**26 IR 1559**
844 IAC 2.2-2-5	A	02-180	26 IR 179	**26 IR 1560**
844 IAC 2.2-2-8	A	02-180	26 IR 179	**26 IR 1560**
844 IAC 4-1-1	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-1	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-2	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-3.1	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-4.1	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-5	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-6	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-7	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-8	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-9	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-10	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.1-11	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-4.5	N	02-12	25 IR 2302	*CPH (25 IR 2746) **26 IR 28**
844 IAC 4-5-1	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-6-2	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-6-2.1	N	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-6-5	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-6-8	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 4-7-5	R	02-12	25 IR 2308	*CPH (25 IR 2746) **26 IR 34**
844 IAC 5-1-1	A	02-268	26 IR 2117	
844 IAC 5-1-3	A	02-268	26 IR 2118	
844 IAC 5-3	N	02-268	26 IR 2118	
844 IAC 5-4	N	02-268	26 IR 2120	
844 IAC 6-1-4	A	01-431	25 IR 3454	**26 IR 377**
844 IAC 6-3-5	A	01-432	25 IR 3455	**26 IR 378**
844 IAC 6-4-1	A	02-181	26 IR 541	**26 IR 2373**

TITLE 845 BOARD OF PODIATRIC MEDICINE

845 IAC 1-5-2	R	01-363	25 IR 3456	*I (26 IR 1104)
845 IAC 1-5-2.1	N	01-363	25 IR 3455	*I (26 IR 1104)
845 IAC 1-6-8	R	01-229	24 IR 4193	*ARR (25 IR 1185)
845 IAC 1-6-9	N	01-229	24 IR 4193	*ARR (25 IR 1185)

TITLE 848 INDIANA STATE BOARD OF NURSING

848 IAC 1-1-2.1	A	02-247	26 IR 2124	
848 IAC 1-1-6	A	02-247	26 IR 2124	
848 IAC 1-1-7	A	02-247	26 IR 2125	
848 IAC 1-1-14	A	02-183	26 IR 2123	
848 IAC 6	N	02-183	26 IR 2121	

TITLE 852 INDIANA OPTOMETRY BOARD

852 IAC 1-1.1-4	A	02-131	25 IR 3869	**26 IR 1944**
852 IAC 1-13-1	A	02-132	25 IR 3869	**26 IR 2373**
852 IAC 1-13-2	A	02-132	25 IR 3870	**26 IR 2374**
852 IAC 1-17	N	02-133	25 IR 3870	**26 IR 1561**

TITLE 856 INDIANA BOARD OF PHARMACY

856 IAC 1-35-1	A	02-172	25 IR 4211	**26 IR 1561**
856 IAC 1-35-4	A	02-172	25 IR 4212	**26 IR 1562**
856 IAC 1-35-6	R	02-172	25 IR 4212	**26 IR 1562**
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Revenue, Department of State

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*Key:

A:	Amended Text
AGA:	Attorney General's Action
AROC:	Administrative Rules Oversight Committee Notice
ARR:	Agency Recalls Rule
AWR:	Agency Withdrew Rule
CPH:	Change in Public Hearing
DAG:	Disapproved by Attorney General
DG:	Disapproved by Governor
ER:	Emergency Rule
ERR:	Errata
ETR:	Emergency Temporary Rule
ETS:	Emergency Temporary Standard
GRAT:	Governor Requires Additional Time
I:	Document Ineffective
N:	New Text
NRA:	Notice of Rule Adoption
OAC:	Objection to Errata
ON:	Other Notices of Administrative Action
R:	Repealed Text
RA:	Readopted Rule
SAC:	Solicitation of Advance Comment
SPE:	Statutory Period for Promulgation Expired
SPE-SE:	Statutory Period for Promulgation Expired; Signed After Expiration
††:	Renumbered or Added in Final Rule

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